BEFORE THE BOARD OF DISCIPLINARY APPEALS
APPOINTED BY
THE SUPREME COURT OF TEXAS

IN THE MATTER OF	§	
GARY L. LASSEN	§	**CAUSE NO.** 57323
STATE BAR CARD NO. 11969500	§	

PETITION FOR RECIPROCAL DISCIPLINE

TO THE BOARD OF DISCIPLINARY APPEALS:

Petitioner, the Commission for Lawyer Discipline (hereinafter called "Petitioner"), brings this action against Respondent, Gary L. Lassen, (hereinafter called "Respondent"), showing as follows:

1. This action is commenced by Petitioner pursuant to Part IX of the Texas Rules of Disciplinary Procedure. Petitioner is also providing Respondent a copy of Section 7 of this Board's Internal Procedural Rules, relating to Reciprocal Discipline Matters.

2. Respondent is a member of the State Bar of Texas and is licensed but not currently authorized to practice law in Texas. Respondent may be served with a true and correct copy of this Petition for Reciprocal Discipline at Gary L. Lassen, 8854 E. Lost Gold Circle, Gold Canyon, Arizona 85118.

In the Matter of a Member of the State Bar of Arizona,
Gary L. Lassen, Bar No. 005259, Respondent
PDJ-2014-9026

3. On or about March 24, 2014, a Complaint (Exhibit 1) was filed Before the Presiding Disciplinary Judge of the Supreme Court of Arizona in a matter styled, *In the Matter of a Member of the State Bar of Arizona, Gary L. Lassen, Bar No. 005259, Respondent*, PDJ-2014-9026, State Bar No. 11-3805, 13-0301, 13-1205, 13-2214, 13-3323.

4. On or about August 28, 2014, a Report and Order Imposing Sanctions (Exhibit 2) was filed in the Supreme Court of the State of Arizona Before the Office of the Presiding Disciplinary Judge in a matter styled, *In the Matter of a Suspended Member of the State Bar of Arizona, Gary L. Lassen, Bar No. 005259, Respondent,* PDJ-2014-9026, State Bar Nos. 11-3805, 13-0301, 13-1205, 13-2214, 13-3323, that states in pertinent part as follows:

...IT IS ORDERED:

Mr. Lassen is disbarred from the practice of law effective immediately....

5. Respondent appealed the hearing panel's findings and imposition of a disbarment and on or about March 20, 2015, a Decision Order (Exhibit 3) was entered in the Supreme Court of Arizona in a matter styled, In *the Matter of a Suspended Member of the State Bar of Arizona, Gary L. Lassen, Bar No. 5259, Respondent,* Arizona Supreme Court No. SB-14-0048-AP, Office of the Presiding Disciplinary Judge No. PDJ20149026, that states in pertinent part as follows:

> ...With respect to the sanction, the Court affirms the imposition of disbarment, restitution, and costs and expenses of the discipline proceeding.
>
> IT IS ORDERED affirming the decision and sanction of the hearing panel as set forth in this order....

6. In the Decision Order, the Court accepted, with respect to **Count One**, the panel's determination that Respondent violated ERs **1.1** (competence), **3.1** (meritorious claims and contentions), and **8.4(d)** (conduct prejudicial to the administration of justice).

In the Decision Order, the Court accepted, with respect to **Count Two**, the panel's determination that Respondent violated ERs **1.2** (scope of representation), **1.4(a)** (communication), **1.5(a)** (fees), **1.16** (terminating representation), **5.5** (unauthorized practice of law), and **8.4(c)** (conduct involving dishonesty, fraud, deceit or misrepresentation.]

In the Decision Order, the Court accepted, with respect to **Count Three**, the panel's determination that Respondent violated ERs **1.1** (competence), **1.2** (scope of representation), **1.3**

(diligence), **1.4** (communication), **3.2** (expediting litigation), and **8.4(d)** (conduct prejudicial to the administration of justice).

In the Decision Order, the Court accepted, with respect to **Count Four**, the panel's determination that Respondent violated ERs **1.3** (diligence), **3.1** (meritorious claims and contentions), **3.3** (candor towards the tribunal), **3.4** (fairness to opposing party and counsel), and **8.4(d)** (conduct prejudicial to the administration of justice) .

In the Decision Order, the Court accepted, with respect to **Count Five**, the panel's determination that Respondent violated ERs **1.1** (competence), **1.3** (diligence), **3.2** (expediting litigation), **8.1** (knowingly failure to respond to lawful demand for information from a disciplinary authority), **8.4(d)** (conduct prejudicial to the administration of justice) and **Rule 54(d)(2)** (failure to promptly respond to request by the disciplinary authority).

Copies of the Complaint, Report and Order Imposing Sanctions and Order and Decision are attached hereto as Petitioner's Exhibits 1 through 3, and made a part hereof for all intents and purposes as if the same were copied verbatim herein. Petitioner expects to introduce certified copies of Exhibits 1 through 3 at the time of hearing of this cause.

In the Matter of a Disbarred Member of the State Bar of Arizona,
Gary L. Lassen, Bar No. 005259, Respondent,
PDJ-2014-9082

7. On or about September 22, 2014, a Complaint (Exhibit 4) was filed Before the Presiding Disciplinary Judge of the Supreme Court of Arizona in a matter styled, *In the Matter of a Disbarred Member of the State Bar of Arizona, Gary L. Lassen, Bar No. 005259, Respondent*, PDJ-2014-9082, State Bar Nos. 14-0401 and 14-0784.

8. On or about December 24, 2014, a Motion to Amend Initial Complaint with Proposed First Amended Complaint attached (Exhibit 5) was filed Before the Presiding Disciplinary Judge of the Supreme Court of Arizona in a matter styled, *In the Matter of a Disbarred*

Member of the State Bar of Arizona, Gary L. Lassen, Bar No. 005259, Respondent, PDJ-2014-9082, State Bar Nos. 14-0401 and 14-0784.

9. On or about January 5, 2015, an Order Granting Motion to Amend Complaint and Continuing Hearing Date (Exhibit 6) was filed in the Supreme Court of the State of Arizona Before the Presiding Disciplinary Judge of the Supreme Court of Arizona in a matter styled, *In the Matter of a Disbarred Member of the State Bar of Arizona, Gary L. Lassen, Bar No. 005259, Respondent*, PDJ-2014-9082, State Bar No. 14-0401 and 14-0784.

10. On or about May 18, 2015, a Decision and Order Imposing Sanctions (Exhibit 7) was filed Before the Presiding Disciplinary Judge in a matter styled, *In the Matter of a Disbarred Member of the State Bar of Arizona, Gary L. Lassen, Bar No. 005259, Respondent,* PDJ-2014-9082, State Bar Nos. 14-0401, 14-0784, 14-2071, and 14-2297, that states in pertinent part as follows:

> ...IT IS ORDERED Mr. Lassen is disbarred from the practice of law effective the date of this Decision and Order....

11. In the Decision and Order Imposing Sanctions, the Panel found clear and convincing evidence that Respondent violated ERs **1.2** (failure to abide to client's decisions), **1.3** (diligence), **1.4** (communication), **1.5** (unreasonable fees), **1.15** (failure to return unreasonable fees), **1.16(d)** (failure to properly withdraw representation, **3.2** (failure to make reasonable efforts to expedite litigation), **8.1** (failure to respond to lawful demand for information from the disciplinary authority), **8.4(c)** (conduct involving dishonesty, fraud, deceit, or misrepresentations), **8.4(d)** (conduct prejudicial to the administration of justice), **Rule 54(d)** (refusal to cooperate with bar counsel), and **Rule 72** (failure to notify opposing counsel and court of suspension).

12. Respondent appealed the hearing panel's findings and imposition of a disbarment and on or about December 14, 2015, a Decision Order (Exhibit 8) was entered in the Supreme

Court of Arizona in a matter styled, In *the Matter of a Disbarred Member of the State Bar of Arizona, Gary L. Lassen, Bar No. 5259, Respondent,* Arizona Supreme Court No. SB-15-0035-AP, Office of the Presiding Disciplinary Judge No. PDJ20149082, that states in pertinent part as follows:

> ...The Court accepts the panel's determinations as to the charged ethical violations with one exception. The Court rejects the panel's determination in Count Four that Lassen violated ER 1.4.
> With respect to the sanction, the Court affirms the imposition of disbarment and the assessment of costs and expenses of the discipline proceeding.
>
> IT IS ORDERED affirming the decision and sanction of the hearing panel as set forth in this order....

Copies of the Complaint, Motion to Amend Initial Complaint, Order Granting Motion to Amend Complaint and Continuing Hearing Date, Decision and Order Imposing Sanctions and Decision Order are attached hereto as Petitioner's Exhibits 4 through 8, and made a part hereof for all intents and purposes as if the same were copied verbatim herein. Petitioner expects to introduce certified copies of Exhibits 4 through 8 at the time of hearing of this cause.

13. Petitioner prays that, pursuant to Rule 9.02, Texas Rules of Disciplinary Procedure, that this Board issue notice to Respondent, containing a copy of this Petition with exhibits, and an order directing Respondent to show cause within thirty (30) days from the date of the mailing of the notice, why the imposition of the identical discipline in this state would be unwarranted. Petitioner further prays that upon trial of this matter that this Board enters a judgment imposing discipline identical with that imposed by the Supreme Court of Arizona and that Petitioner have such other and further relief to which it may be entitled.

Respectfully submitted,

Linda A. Acevedo
Chief Disciplinary Counsel

Judith Gres DeBerry
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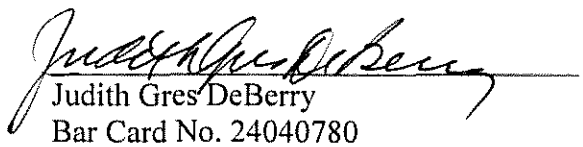
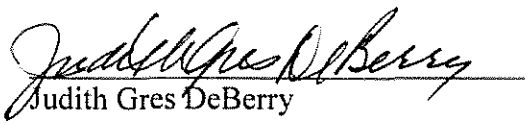


Judith Gres DeBerry
Bar Card No. 24040780
ATTORNEYS FOR PETITIONER

CERTIFICATE OF SERVICE

I certify that upon receipt of the Order to Show Cause from the Board of Disciplinary Appeals, I will serve a copy of this Petition for Reciprocal Discipline and the Order to Show Cause on Gary L. Lassen by personal service.

Gary L. Lassen
8854 E. Lost Gold Circle
Gold Canyon, Arizona 85118



Judith Gres DeBerry

INTERNAL PROCEDURAL RULES

Board of Disciplinary Appeals

Effective February 19, 2015

Contents

SECTION 1: GENERAL PROVISIONS

Rule 1.01 Definitions

(a) "BODA" is the Board of Disciplinary Appeals.

(b) "Chair" is the member elected by BODA to serve as chair or, in the Chair's absence, the member elected by BODA to serve as vice-chair.

(c) "Classification" is the determination by the CDC under TRDP 2.10 or by BODA under TRDP 7.08(C) whether a grievance constitutes a "complaint" or an "inquiry."

(d) "BODA Clerk" is the executive director of BODA or other person appointed by BODA to assume all duties normally performed by the clerk of a court.

(e) "CDC" is the Chief Disciplinary Counsel for the State Bar of Texas and his or her assistants.

(f) "Commission" is the Commission for Lawyer Discipline, a permanent committee of the State Bar of Texas.

(g) "Executive Director" is the executive director of BODA.

(h) "Panel" is any three-member grouping of BODA under TRDP 7.05.

(i) "Party" is a Complainant, a Respondent, or the Commission.

(j) "TDRPC" is the Texas Disciplinary Rules of Professional Conduct.

(k) "TRAP" is the Texas Rules of Appellate Procedure.

(l) "TRCP" is the Texas Rules of Civil Procedure.

(m) "TRDP" is the Texas Rules of Disciplinary Procedure.

(n) "TRE" is the Texas Rules of Evidence.

Rule 1.02 General Powers

Under TRDP 7.08, BODA has and may exercise all the powers of either a trial court or an appellate court, as the case may be, in hearing and determining disciplinary proceedings. But TRDP 15.01 applies to the enforcement of a judgment of BODA.

Rule 1.03 Additional Rules in Disciplinary Matters

Except as varied by these rules and to the extent applicable, the TRCP, TRAP, and TRE apply to all disciplinary matters before BODA, except for appeals from classification decisions, which are governed by TRDP 2.10 and by Section 3 of these rules.

Rule 1.04 Appointment of Panels

(a) BODA may consider any matter or motion by panel, except as specified in (b). The Chair may delegate to the Executive Director the duty to appoint a panel for any BODA action. Decisions are made by a majority vote of the panel; however, any panel member may refer a matter for consideration by BODA sitting en banc. Nothing in these rules gives a party the right to be heard by BODA sitting en banc.

(b) Any disciplinary matter naming a BODA member as Respondent must be considered by BODA sitting en banc. A disciplinary matter naming a BODA staff member as Respondent need not be heard en banc.

Rule 1.05 Filing of Pleadings, Motions, and Other Papers

(a) **Electronic Filing.** All documents must be filed electronically. Unrepresented persons or those without the means to file electronically may electronically file documents, but it is not required.

(1) **Email Address.** The email address of an attorney or an unrepresented party who electronically files a document must be included on the document.

(2) **Timely Filing.** Documents are filed electronically by emailing the document to the BODA Clerk at the email address designated by BODA

for that purpose. A document filed by email will be considered filed the day that the email is sent. The date sent is the date shown for the message in the inbox of the email account designated for receiving filings. If a document is sent after 5:00 p.m. or on a weekend or holiday officially observed by the State of Texas, it is considered filed the next business day.

(3) It is the responsibility of the party filing a document by email to obtain the correct email address for BODA and to confirm that the document was received by BODA in legible form. Any document that is illegible or that cannot be opened as part of an email attachment will not be considered filed. If a document is untimely due to a technical failure or a system outage, the filing party may seek appropriate relief from BODA.

(4) **Exceptions.**

(i) An appeal to BODA of a decision by the CDC to classify a grievance as an inquiry is not required to be filed electronically.

(ii) The following documents must not be filed electronically:

a) documents that are filed under seal or subject to a pending motion to seal; and

b) documents to which access is otherwise restricted by court order.

(iii) For good cause, BODA may permit a party to file other documents in paper form in a particular case.

(5) **Format.** An electronically filed document must:

(i) be in text-searchable portable document format (PDF);

(ii) be directly converted to PDF rather than scanned, if possible; and

(iii) not be locked.

(b) A paper will not be deemed filed if it is sent to an individual BODA member or to another address other than the address designated by BODA under Rule 1.05(a)(2).

(c) **Signing.** Each brief, motion, or other paper filed must be signed by at least one attorney for the party or by the party pro se and must give the State Bar of Texas card number, mailing address, telephone number, email address, and fax number, if any, of each attorney whose name is signed or of the party (if applicable). A document is considered signed if the document includes:

(1) an "/s/" and name typed in the space where the signature would otherwise appear, unless the document is notarized or sworn; or

(2) an electronic image or scanned image of the signature.

(d) **Paper Copies.** Unless required by BODA, a party need not file a paper copy of an electronically filed document.

(e) **Service.** Copies of all documents filed by any party other than the record filed by the evidentiary panel clerk or the court reporter must, at or before the time of filing, be served on all other parties as required and authorized by the TRAP.

Rule 1.06 Service of Petition

In any disciplinary proceeding before BODA initiated by service of a petition on the Respondent, the petition may be served by personal service; by certified mail with return receipt requested; or, if permitted by BODA, in any other manner that is authorized by the TRCP and reasonably calculated under all the circumstances to apprise the Respondent of the proceeding and to give him or

her reasonable time to appear and answer. To establish service by certified mail, the return receipt must contain the Respondent's signature.

Rule 1.07 Hearing Setting and Notice

(a) **Original Petitions.** In any kind of case initiated by the CDC's filing a petition or motion with BODA, the CDC may contact the BODA Clerk for the next regularly available hearing date before filing the original petition. If a hearing is set before the petition is filed, the petition must state the date, time, and place of the hearing. Except in the case of a petition to revoke probation under TRDP 2.23, the hearing date must be at least 30 days from the date that the petition is served on the Respondent.

(b) **Expedited Settings.** If a party desires a hearing on a matter on a date earlier than the next regularly available BODA hearing date, the party may request an expedited setting in a written motion setting out the reasons for the request. Unless the parties agree otherwise, and except in the case of a petition to revoke probation under TRDP 2.23, the expedited hearing setting must be at least 30 days from the date of service of the petition, motion, or other pleading. BODA has the sole discretion to grant or deny a request for an expedited hearing date.

(c) **Setting Notices.** BODA must notify the parties of any hearing date that is not noticed in an original petition or motion.

(d) **Announcement Docket.** Attorneys and parties appearing before BODA must confirm their presence and present any questions regarding procedure to the BODA Clerk in the courtroom immediately prior to the time docket call is scheduled to begin. Each party with a matter on the docket must appear at the docket call to give an announcement of readiness, to give a time estimate for the hearing, and to present any preliminary motions or matters. Immediately following the docket call, the Chair will set and announce the order of cases to be heard.

Rule 1.08 Time to Answer

The Respondent may file an answer at any time, except where expressly provided otherwise by these rules or the TRDP, or when an answer date has been set by prior order of BODA. BODA may, but is not required to, consider an answer filed the day of the hearing.

Rule 1.09 Pretrial Procedure

(a) Motions.

(1) **Generally.** To request an order or other relief, a party must file a motion supported by sufficient cause with proof of service on all other parties. The motion must state with particularity the grounds on which it is based and set forth the relief sought. All supporting briefs, affidavits, or other documents must be served and filed with the motion. A party may file a response to a motion at any time before BODA rules on the motion or by any deadline set by BODA. Unless otherwise required by these rules or the TRDP, the form of a motion must comply with the TRCP or the TRAP.

(2) **For Extension of Time.** All motions for extension of time in any matter before BODA must be in writing, comply with (a)(1), and specify the following:

(i) if applicable, the date of notice of decision of the evidentiary panel, together with the number and style of the case;

(ii) if an appeal has been perfected, the date when the appeal was perfected;

(iii) the original deadline for filing the item in question;

(iv) the length of time requested for the extension;

(v) the number of extensions of time that have been granted previously regarding the item in question; and

(vi) the facts relied on to reasonably explain the need for an extension.

(b) **Pretrial Scheduling Conference.** Any party may request a pretrial scheduling conference, or BODA on its own motion may require a pretrial scheduling conference.

(c) **Trial Briefs.** In any disciplinary proceeding before BODA, except with leave, all trial briefs and memoranda must be filed with the BODA Clerk no later than ten days before the day of the hearing.

(d) **Hearing Exhibits, Witness Lists, and Exhibits Tendered for Argument.** A party may file a witness list, exhibit, or any other document to be used at a hearing or oral argument before the hearing or argument. A party must bring to the hearing an original and 12 copies of any document that was not filed at least one business day before the hearing. The original and copies must be:

(1) marked;

(2) indexed with the title or description of the item offered as an exhibit; and

(3) if voluminous, bound to lie flat when open and tabbed in accordance with the index.

All documents must be marked and provided to the opposing party before the hearing or argument begins.

Rule 1.10 Decisions

(a) **Notice of Decisions.** The BODA Clerk must give notice of all decisions and opinions to the parties or their attorneys of record.

(b) **Publication of Decisions.** BODA must report judgments or orders of public discipline:

(1) as required by the TRDP; and

(2) on its website for a period of at least ten years following the date of the disciplinary judgment or order.

(c) **A**bstracts of Classification Appeals. BODA may, in its discretion, prepare an abstract of a classification appeal for a public reporting service.

Rule 1.11 Board of Disciplinary Appeals Opinions

(a) BODA may render judgment in any disciplinary matter with or without written opinion. In accordance with TRDP 6.06, all written opinions of BODA are open to the public and must be made available to the public reporting services, print or electronic, for publishing. A majority of the members who participate in considering the disciplinary matter must determine if an opinion will be written. The names of the participating members must be noted on all written opinions of BODA.

(b) Only a BODA member who participated in the decision of a disciplinary matter may file or join in a written opinion concurring in or dissenting from the judgment of BODA. For purposes of this rule, in hearings in which evidence is taken, no member may participate in the decision unless that member was present at the hearing. In all other proceedings, no member may participate unless that member has reviewed the record. Any member of BODA may file a written opinion in connection with the denial of a hearing or rehearing en banc.

(c) A BODA determination in an appeal from a grievance classification decision under TRDP 2.10 is not a judgment for purposes of this rule and may be issued without a written opinion.

Rule 1.12 BODA Work Product and Drafts

A document or record of any nature—regardless of its form, characteristics, or means of transmission—that is created or produced in connection with or related to BODA's adjudicative decision-making process is not subject to disclosure or discovery. This includes documents prepared by any BODA member, BODA staff, or any other person acting on behalf of or at the direction of BODA.

Rule 1.13 Record Retention

Records of appeals from classification decisions must be retained by the BODA Clerk for a period of at least three years from the date of disposition. Records of other disciplinary matters must be retained for a period of at least five years from the date of final judgment, or for at least one year after the date a suspension or disbarment ends, whichever is later. For purposes of this rule, a record is any document, paper, letter, map, book, tape, photograph, film, recording, or other material filed with BODA, regardless of its form, characteristics, or means of transmission.

Rule 1.14 Costs of Reproduction of Records

The BODA Clerk may charge a reasonable amount for the reproduction of nonconfidential records filed with BODA. The fee must be paid in advance to the BODA Clerk.

Rule 1.15 Publication of These Rules

These rules will be published as part of the TDRPC and TRDP.

SECTION 2: ETHICAL CONSIDERATIONS

Rule 2.01 Representing or Counseling Parties in Disciplinary Matters and Legal Malpractice Cases

(a) A current member of BODA must not represent a party or testify voluntarily in a disciplinary action or proceeding. Any BODA member who is subpoenaed or otherwise compelled to appear at a disciplinary action or proceeding, including at a deposition, must promptly notify the BODA Chair.

(b) A current BODA member must not serve as an expert witness on the TDRPC.

(c) A BODA member may represent a party in a legal malpractice case, provided that he or she is later recused in accordance with these rules from any proceeding before BODA arising out of the same facts.

Rule 2.02 Confidentiality

(a) BODA deliberations are confidential, must not be disclosed by BODA members or staff, and are not subject to disclosure or discovery.

(b) Classification appeals, appeals from evidentiary judgments of private reprimand, appeals from an evidentiary judgment dismissing a case, interlocutory appeals or any interim proceedings from an ongoing evidentiary case, and disability cases are confidential under the TRDP. BODA must maintain all records associated with these cases as confidential, subject to disclosure only as provided in the TRDP and these rules.

(c) If a member of BODA is subpoenaed or otherwise compelled by law to testify in any proceeding, the member must not disclose a matter that was discussed in conference in connection with a disciplinary case unless the member is required to do so by a court of competent jurisdiction.

Rule 2.03 Disqualification and Recusal of BODA Members

(a) BODA members are subject to disqualification and recusal as provided in TRCP 18b.

(b) BODA members may, in addition to recusals under (a), voluntarily recuse themselves from any discussion and voting for any reason. The reasons that a BODA member is recused from a case are not subject to discovery.

(c) These rules do not disqualify a lawyer who is a member of, or associated with,

the law firm of a BODA member from serving on a grievance committee or representing a party in a disciplinary proceeding or legal malpractice case. But a BODA member must recuse him- or herself from any matter in which a lawyer who is a member of, or associated with, the BODA member's firm is a party or represents a party.

SECTION 3: CLASSIFICATION APPEALS

Rule 3.01 Notice of Right to Appeal

(a) If a grievance filed by the Complainant under TRDP 2.10 is classified as an inquiry, the CDC must notify the Complainant of his or her right to appeal as set out in TRDP 2.10 or another applicable rule.

(b) To facilitate the potential filing of an appeal of a grievance classified as an inquiry, the CDC must send the Complainant an appeal notice form, approved by BODA, with the classification disposition. The form must include the docket number of the matter; the deadline for appealing; and information for mailing, faxing, or emailing the appeal notice form to BODA. The appeal notice form must be available in English and Spanish.

Rule 3.02 Record on Appeal

BODA must only consider documents that were filed with the CDC prior to the classification decision. When a notice of appeal from a classification decision has been filed, the CDC must forward to BODA a copy of the grievance and all supporting documentation. If the appeal challenges the classification of an amended grievance, the CDC must also send BODA a copy of the initial grievance, unless it has been destroyed.

SECTION 4: APPEALS FROM EVIDENTIARY PANEL HEARINGS

Rule 4.01 Perfecting Appeal

(a) **Appellate Timetable.** The date that the evidentiary judgment is signed starts the appellate timetable under this section. To make TRDP 2.21 consistent with this requirement, the date that the judgment is signed is the "date of notice" under Rule 2.21.

(b) **Notification of the Evidentiary Judgment.** The clerk of the evidentiary panel must notify the parties of the judgment as set out in TRDP 2.21.

(1) The evidentiary panel clerk must notify the Commission and the Respondent in writing of the judgment. The notice must contain a clear statement that any appeal of the judgment must be filed with BODA within 30 days of the date that the judgment was signed. The notice must include a copy of the judgment rendered.

(2) The evidentiary panel clerk must notify the Complainant that a judgment has been rendered and provide a copy of the judgment, unless the evidentiary panel dismissed the case or imposed a private reprimand. In the case of a dismissal or private reprimand, the evidentiary panel clerk must notify the Complainant of the decision and that the contents of the judgment are confidential. Under TRDP 2.16, no additional information regarding the contents of a judgment of dismissal or private reprimand may be disclosed to the Complainant.

(c) **Filing Notice of Appeal.** An appeal is perfected when a written notice of appeal is filed with BODA. If a notice of appeal and any other accompanying documents are mistakenly filed with the evidentiary panel clerk, the notice is deemed to have been filed the same day with BODA, and the evidentiary panel clerk must immediately send the BODA Clerk a copy of the notice and any accompanying documents.

(d) **Time to File.** In accordance with TRDP 2.24, the notice of appeal must be filed within 30 days after the date the judgment is signed. In the event a motion for new trial or motion to modify the judgment is timely filed with the evidentiary panel, the notice of appeal must be filed with BODA within 90 days from the date the judgment is signed.

(e) **Extension of Time.** A motion for an extension of time to file the notice of appeal must be filed no later than 15 days after the last day allowed for filing the notice of appeal. The motion must comply with Rule 1.09.

Rule 4.02 Record on Appeal

(a) **Contents.** The record on appeal consists of the evidentiary panel clerk's record and, where necessary to the appeal, a reporter's record of the evidentiary panel hearing.

(b) **Stipulation as to Record.** The parties may designate parts of the clerk's record and the reporter's record to be included in the record on appeal by written stipulation filed with the clerk of the evidentiary panel.

(c) **Responsibility for Filing Record.**

(1) Clerk's Record.

(i) After receiving notice that an appeal has been filed, the clerk of the evidentiary panel is responsible for preparing, certifying, and timely filing the clerk's record.

(ii) Unless the parties stipulate otherwise, the clerk's record on appeal must contain the items listed in TRAP 34.5(a) and any other paper on file with the evidentiary panel, including the election letter, all pleadings on which the hearing was held, the docket sheet, the evidentiary panel's charge, any findings of fact and conclusions of law, all other pleadings, the judgment or other orders appealed from, the notice of decision sent to each party, any postsubmission pleadings and briefs, and the notice of appeal.

(iii) If the clerk of the evidentiary panel is unable for any reason to prepare and transmit the clerk's record by the due date, he or she must promptly notify BODA and the parties, explain why the clerk's record cannot be timely filed, and give the date by which he or she expects the clerk's record to be filed.

(2) Reporter's Record.

(i) The court reporter for the evidentiary panel is responsible for timely filing the reporter's record if:

a) a notice of appeal has been filed;

b) a party has requested that all or part of the reporter's record be prepared; and

c) the party requesting all or part of the reporter's record has paid the reporter's fee or has made satisfactory arrangements with the reporter.

(ii) If the court reporter is unable for any reason to prepare and transmit the reporter's record by the due date, he or she must promptly notify BODA and the parties, explain the reasons why the reporter's record cannot be timely filed, and give the date by which he or she expects the reporter's record to be filed.

(d) Preparation of Clerk's Record.

(1) To prepare the clerk's record, the

evidentiary panel clerk must:

(i) gather the documents designated by the parties' written stipulation or, if no stipulation was filed, the documents required under (c)(1)(ii);

(ii) start each document on a new page;

(iii) include the date of filing on each document;

(iv) arrange the documents in chronological order, either by the date of filing or the date of occurrence;

(v) number the pages of the clerk's record in the manner required by (d)(2);

(vi) prepare and include, after the front cover of the clerk's record, a detailed table of contents that complies with (d)(3); and

(vii) certify the clerk's record.

(2) The clerk must start the page numbering on the front cover of the first volume of the clerk's record and continue to number all pages consecutively—including the front and back covers, tables of contents, certification page, and separator pages, if any—until the final page of the clerk's record, without regard for the number of volumes in the clerk's record, and place each page number at the bottom of each page.

(3) The table of contents must:

(i) identify each document in the entire record (including sealed documents); the date each document was filed; and, except for sealed documents, the page on which each document begins;

(ii) be double-spaced;

(iii) conform to the order in which documents appear in the clerk's record, rather than in alphabetical order;

(iv) contain bookmarks linking each description in the table of contents (except for descriptions of sealed documents) to the page on which the document begins; and

(v) if the record consists of multiple volumes, indicate the page on which each volume begins.

(e) **Electronic Filing of the Clerk's Record.** The evidentiary panel clerk must file the record electronically. When filing a clerk's record in electronic form, the evidentiary panel clerk must:

(1) file each computer file in text-searchable Portable Document Format (PDF);

(2) create electronic bookmarks to mark the first page of each document in the clerk's record;

(3) limit the size of each computer file to 100 MB or less, if possible; and

(4) directly convert, rather than scan, the record to PDF, if possible.

(f) Preparation of the Reporter's Record.

(1) The appellant, at or before the time prescribed for perfecting the appeal, must make a written request for the reporter's record to the court reporter for the evidentiary panel. The request must designate the portion of the evidence and other proceedings to be included. A copy of the request must be filed with the evidentiary panel and BODA and must be served on the appellee. The

reporter's record must be certified by the court reporter for the evidentiary panel.

(2) The court reporter or recorder must prepare and file the reporter's record in accordance with TRAP 34.6 and 35 and the Uniform Format Manual for Texas Reporters' Records.

(3) The court reporter or recorder must file the reporter's record in an electronic format by emailing the document to the email address designated by BODA for that purpose.

(4) The court reporter or recorder must include either a scanned image of any required signature or "/s/" and name typed in the space where the signature would otherwise appear.

(5) A court reporter or recorder must not lock any document that is part of the record.

(6) In exhibit volumes, the court reporter or recorder must create bookmarks to mark the first page of each exhibit document.

(g) **Other Requests.** At any time before the clerk's record is prepared, or within ten days after service of a copy of appellant's request for the reporter's record, any party may file a written designation requesting that additional exhibits and portions of testimony be included in the record. The request must be filed with the evidentiary panel and BODA and must be served on the other party.

(h) **Inaccuracies or Defects.** If the clerk's record is found to be defective or inaccurate, the BODA Clerk must inform the clerk of the evidentiary panel of the defect or inaccuracy and instruct the clerk to make the correction. Any inaccuracies in the reporter's record may be corrected by agreement of the parties without the court reporter's recertification. Any dispute regarding the reporter's record that the parties are unable to resolve by agreement must be resolved by the evidentiary panel.

(i) **Appeal from Private Reprimand.** Under TRDP 2.16, in an appeal from a judgment of private reprimand, BODA must mark the record as confidential, remove the attorney's name from the case style, and take any other steps necessary to preserve the confidentiality of the private reprimand.

Rule 4.03 Time to File Record

(a) **Timetable.** The clerk's record and reporter's record must be filed within 60 days after the date the judgment is signed. If a motion for new trial or motion to modify the judgment is filed with the evidentiary panel, the clerk's record and the reporter's record must be filed within 120 days from the date the original judgment is signed, unless a modified judgment is signed, in which case the clerk's record and the reporter's record must be filed within 60 days of the signing of the modified judgment. Failure to file either the clerk's record or the reporter's record on time does not affect BODA's jurisdiction, but may result in BODA's exercising its discretion to dismiss the appeal, affirm the judgment appealed from, disregard materials filed late, or apply presumptions against the appellant.

(b) **If No Record Filed.**

(1) If the clerk's record or reporter's record has not been timely filed, the BODA Clerk must send notice to the party responsible for filing it, stating that the record is late and requesting that the record be filed within 30 days. The BODA Clerk must send a copy of this notice to all the parties and the clerk of the evidentiary panel.

(2) If no reporter's record is filed due to appellant's fault, and if the clerk's

record has been filed, BODA may, after first giving the appellant notice and a reasonable opportunity to cure, consider and decide those issues or points that do not require a reporter's record for a decision. BODA may do this if no reporter's record has been filed because:

(i) the appellant failed to request a reporter's record; or

(ii) the appellant failed to pay or make arrangements to pay the reporter's fee to prepare the reporter's record, and the appellant is not entitled to proceed without payment of costs.

(c) **Extension of Time to File the Reporter's Record.** When an extension of time is requested for filing the reporter's record, the facts relied on to reasonably explain the need for an extension must be supported by an affidavit of the court reporter. The affidavit must include the court reporter's estimate of the earliest date when the reporter's record will be available for filing.

(d) **Supplemental Record.** If anything material to either party is omitted from the clerk's record or reporter's record, BODA may, on written motion of a party or on its own motion, direct a supplemental record to be certified and transmitted by the clerk for the evidentiary panel or the court reporter for the evidentiary panel.

Rule 4.04 Copies of the Record

The record may not be withdrawn from the custody of the BODA Clerk. Any party may obtain a copy of the record or any designated part thereof by making a written request to the BODA Clerk and paying any charges for reproduction in advance.

Rule 4.05 Requisites of Briefs

(a) **Appellant's Filing Date.** Appellant's brief must be filed within 30 days after the clerk's record or the reporter's record is filed, whichever is later.

(b) **Appellee's Filing Date.** Appellee's brief must be filed within 30 days after the appellant's brief is filed.

(c) **Contents.** Briefs must contain:

(1) a complete list of the names and addresses of all parties to the final decision and their counsel;

(2) a table of contents indicating the subject matter of each issue or point, or group of issues or points, with page references where the discussion of each point relied on may be found;

(3) an index of authorities arranged alphabetically and indicating the pages where the authorities are cited;

(4) a statement of the case containing a brief general statement of the nature of the cause or offense and the result;

(5) a statement, without argument, of the basis of BODA's jurisdiction;

(6) a statement of the issues presented for review or points of error on which the appeal is predicated;

(7) a statement of facts that is without argument, is supported by record references, and details the facts relating to the issues or points relied on in the appeal;

(8) the argument and authorities;

(9) conclusion and prayer for relief;

(10) a certificate of service; and

(11) an appendix of record excerpts pertinent to the issues presented for review.

(d) **Length of Briefs; Contents Included and Excluded.** In calculating the length of a document, every word and every part

of the document, including headings, footnotes, and quotations, must be counted except the following: caption, identity of the parties and counsel, statement regarding oral argument, table of contents, index of authorities, statement of the case, statement of issues presented, statement of the jurisdiction, signature, proof of service, certificate of compliance, and appendix. Briefs must not exceed 15,000 words if computer-generated, and 50 pages if not, except on leave of BODA. A reply brief must not exceed 7,500 words if computer-generated, and 25 pages if not, except on leave of BODA. A computer-generated document must include a certificate by counsel or the unrepresented party stating the number of words in the document. The person who signs the certification may rely on the word count of the computer program used to prepare the document.

(e) **Amendment or Supplementation.** BODA has discretion to grant leave to amend or supplement briefs.

(f) **Failure of the Appellant to File a Brief.** If the appellant fails to timely file a brief, BODA may:

(1) dismiss the appeal for want of prosecution, unless the appellant reasonably explains the failure, and the appellee is not significantly injured by the appellant's failure to timely file a brief;

(2) decline to dismiss the appeal and make further orders within its discretion as it considers proper; or

(3) if an appellee's brief is filed, regard that brief as correctly presenting the case and affirm the evidentiary panel's judgment on that brief without examining the record.

Rule 4.06 Oral Argument

(a) **Request.** A party desiring oral argument must note the request on the front cover of the party's brief. A party's failure to timely request oral argument waives the party's right to argue. A party who has requested argument may later withdraw the request. But even if a party has waived oral argument, BODA may direct the party to appear and argue. If oral argument is granted, the clerk will notify the parties of the time and place for submission.

(b) **Right to Oral Argument.** A party who has filed a brief and who has timely requested oral argument may argue the case to BODA unless BODA, after examining the briefs, decides that oral argument is unnecessary for any of the following reasons:

(1) the appeal is frivolous;

(2) the dispositive issue or issues have been authoritatively decided;

(3) the facts and legal arguments are adequately presented in the briefs and record; or

(4) the decisional process would not be significantly aided by oral argument.

(c) **Time Allowed.** Each party will have 20 minutes to argue. BODA may, on the request of a party or on its own, extend or shorten the time allowed for oral argument. The appellant may reserve a portion of his or her allotted time for rebuttal.

Rule 4.07 Decision and Judgment

(a) **Decision.** BODA may do any of the following:

(1) affirm in whole or in part the decision of the evidentiary panel;

(2) modify the panel's findings and affirm the findings as modified;

(3) reverse in whole or in part the panel's findings and render the decision that the panel should have rendered; or

(4) reverse the panel's findings and

remand the cause for further proceedings to be conducted by:

(i) the panel that entered the findings; or

(ii) a statewide grievance committee panel appointed by BODA and composed of members selected from the state bar districts other than the district from which the appeal was taken.

(b) **Mandate.** In every appeal, the BODA Clerk must issue a mandate in accordance with BODA's judgment and send it to the evidentiary panel and to all the parties.

Rule 4.08 Appointment of Statewide Grievance Committee

If BODA remands a cause for further proceedings before a statewide grievance committee, the BODA Chair will appoint the statewide grievance committee in accordance with TRDP 2.27. The committee must consist of six members: four attorney members and two public members randomly selected from the current pool of grievance committee members. Two alternates, consisting of one attorney and one public member, must also be selected. BODA will appoint the initial chair who will serve until the members of the statewide grievance committee elect a chair of the committee at the first meeting. The BODA Clerk will notify the Respondent and the CDC that a committee has been appointed.

Rule 4.09 Involuntary Dismissal

Under the following circumstances and on any party's motion or on its own initiative after giving at least ten days' notice to all parties, BODA may dismiss the appeal or affirm the appealed judgment or order. Dismissal or affirmance may occur if the appeal is subject to dismissal:

(a) for want of jurisdiction;

(b) for want of prosecution; or

(c) because the appellant has failed to comply with a requirement of these rules, a court order, or a notice from the clerk requiring a response or other action within a specified time.

SECTION 5: PETITIONS TO REVOKE PROBATION

Rule 5.01 Initiation and Service

(a) Before filing a motion to revoke the probation of an attorney who has been sanctioned, the CDC must contact the BODA Clerk to confirm whether the next regularly available hearing date will comply with the 30-day requirement of TRDP. The Chair may designate a three-member panel to hear the motion, if necessary, to meet the 30-day requirement of TRDP 2.23.

(b) Upon filing the motion, the CDC must serve the Respondent with the motion and any supporting documents in accordance with TRDP 2.23, the TRCP, and these rules. The CDC must notify BODA of the date that service is obtained on the Respondent.

Rule 5.02 Hearing

Within 30 days of service of the motion on the Respondent, BODA must docket and set the matter for a hearing and notify the parties of the time and place of the hearing. On a showing of good cause by a party or on its own motion, BODA may continue the case to a future hearing date as circumstances require.

SECTION 6: COMPULSORY DISCIPLINE

Rule 6.01 Initiation of Proceeding

Under TRDP 8.03, the CDC must file a petition for compulsory discipline with BODA and serve the Respondent in accordance with the TRDP and Rule 1.06 of these rules.

Rule 6.02 Interlocutory Suspension

(a) **Interlocutory Suspension.** In any compulsory proceeding under TRDP Part VIII in which BODA determines that the Respondent has been convicted of an Intentional Crime and that the criminal conviction is on direct appeal, BODA may suspend the Respondent's license to

practice law by interlocutory order. In any compulsory case in which BODA has imposed an interlocutory order of suspension, BODA retains jurisdiction to render final judgment after the direct appeal of the criminal conviction is final. For purposes of rendering final judgment in a compulsory discipline case, the direct appeal of the criminal conviction is final when the appellate court issues its mandate.

(b) **Criminal Conviction Affirmed.** If the criminal conviction made the basis of a compulsory interlocutory suspension is affirmed and becomes final, the CDC must file a motion for final judgment that complies with TRDP 8.05.

(1) If the criminal sentence is fully probated or is an order of deferred adjudication, the motion for final judgment must contain notice of a hearing date. The motion will be set on BODA's next available hearing date.

(2) If the criminal sentence is not fully probated:

(i) BODA may proceed to decide the motion without a hearing if the attorney does not file a verified denial within ten days of service of the motion; or

(ii) BODA may set the motion for a hearing on the next available hearing date if the attorney timely files a verified denial.

(c) Criminal Conviction Reversed. If an appellate court issues a mandate reversing the criminal conviction while a Respondent is subject to an interlocutory suspension, the Respondent may file a motion to terminate the interlocutory suspension. The motion to terminate the interlocutory suspension must have certified copies of the decision and mandate of the reversing court attached. If the CDC does not file an opposition to the termination within ten days of being served with the motion, BODA may proceed to decide the motion without a hearing or set the matter for a hearing on its own motion. If the CDC timely opposes the motion, BODA must set the motion for a hearing on its next available hearing date. An order terminating an interlocutory order of suspension does not automatically reinstate a Respondent's license.

SECTION 7: RECIPROCAL DISCIPLINE

Rule 7.01 Initiation of Proceeding

The Commission for Lawyer Discipline may initiate an action for reciprocal discipline by filing a petition with BODA under TRDP Part IX and these rules. The petition must request that the Respondent be disciplined in Texas and have attached to it any information concerning the disciplinary matter from the other jurisdiction, including a certified copy of the order or judgment rendered against the Respondent.

Rule 7.02 Order to Show Cause

When a petition is filed, the Chair immediately issues a show cause order and a hearing notice and forwards them to the CDC, who must serve the order and notice on the Respondent. The CDC must notify BODA of the date that service is obtained.

Rule 7.03 Attorney's Response

If the Respondent does not file an answer within 30 days of being served with the order and notice but thereafter appears at the hearing, BODA may, at the discretion of the Chair, receive testimony from the Respondent relating to the merits of the petition.

SECTION 8: DISTRICT DISABILITY COMMITTEE HEARINGS

Rule 8.01 Appointment of District Disability Committee

(a) If the evidentiary panel of the grievance committee finds under TRDP 2.17(P)(2),

or the CDC reasonably believes under TRDP 2.14(C), that a Respondent is suffering from a disability, the rules in this section will apply to the de novo proceeding before the District Disability Committee held under TRDP Part XII.

(b) Upon receiving an evidentiary panel's finding or the CDC's referral that an attorney is believed to be suffering from a disability, the BODA Chair must appoint a District Disability Committee in compliance with TRDP 12.02 and designate a chair. BODA will reimburse District Disability Committee members for reasonable expenses directly related to service on the District Disability Committee. The BODA Clerk must notify the CDC and the Respondent that a committee has been appointed and notify the Respondent where to locate the procedural rules governing disability proceedings.

(c) A Respondent who has been notified that a disability referral will be or has been made to BODA may, at any time, waive in writing the appointment of the District Disability Committee or the hearing before the District Disability Committee and enter into an agreed judgment of indefinite disability suspension, provided that the Respondent is competent to waive the hearing. If the Respondent is not represented, the waiver must include a statement affirming that the Respondent has been advised of the right to appointed counsel and waives that right as well.

(d) All pleadings, motions, briefs, or other matters to be filed with the District Disability Committee must be filed with the BODA Clerk.

(e) Should any member of the District Disability Committee become unable to serve, the BODA Chair may appoint a substitute member.

Rule 8.02 Petition and Answer

(a) **Petition.** Upon being notified that the District Disability Committee has been appointed by BODA, the CDC must, within 20 days, file with the BODA Clerk and serve on the Respondent a copy of a petition for indefinite disability suspension. Service may be made in person or by certified mail, return receipt requested. If service is by certified mail, the return receipt with the Respondent's signature must be filed with the BODA Clerk.

(b) **Answer.** The Respondent must, within 30 days after service of the petition for indefinite disability suspension, file an answer with the BODA Clerk and serve a copy of the answer on the CDC.

(c) **Hearing Setting.** The BODA Clerk must set the final hearing as instructed by the chair of the District Disability Committee and send notice of the hearing to the parties.

Rule 8.03 Discovery

(a) **Limited Discovery.** The District Disability Committee may permit limited discovery. The party seeking discovery must file with the BODA Clerk a written request that makes a clear showing of good cause and substantial need and a proposed order. If the District Disability Committee authorizes discovery in a case, it must issue a written order. The order may impose limitations or deadlines on the discovery.

(b) **Physical or Mental Examinations.** On written motion by the Commission or on its own motion, the District Disability Committee may order the Respondent to submit to a physical or mental examination by a qualified healthcare or mental healthcare professional. Nothing in this rule limits the Respondent's right to an examination by a professional of his or her choice in addition to any exam

ordered by the District Disability Committee.

(1) **Motion.** The Respondent must be given reasonable notice of the examination by written order specifying the name, address, and telephone number of the person conducting the examination.

(2) **Report.** The examining professional must file with the BODA Clerk a detailed, written report that includes the results of all tests performed and the professional's findings, diagnoses, and conclusions. The professional must send a copy of the report to the CDC and the Respondent.

(c) **Objections.** A party must make any objection to a request for discovery within 15 days of receiving the motion by filing a written objection with the BODA Clerk. BODA may decide any objection or contest to a discovery motion.

Rule 8.04 Ability to Compel Attendance

The Respondent and the CDC may confront and cross-examine witnesses at the hearing. Compulsory process to compel the attendance of witnesses by subpoena, enforceable by an order of a district court of proper jurisdiction, is available to the Respondent and the CDC as provided in TRCP 176.

Rule 8.05 Respondent's Right to Counsel

(a) The notice to the Respondent that a District Disability Committee has been appointed and the petition for indefinite disability suspension must state that the Respondent may request appointment of counsel by BODA to represent him or her at the disability hearing. BODA will reimburse appointed counsel for reasonable expenses directly related to representation of the Respondent.

(b) To receive appointed counsel under TRDP 12.02, the Respondent must file a written request with the BODA Clerk within 30 days of the date that Respondent is served with the petition for indefinite disability suspension. A late request must demonstrate good cause for the Respondent's failure to file a timely request.

Rule 8.06 Hearing

The party seeking to establish the disability must prove by a preponderance of the evidence that the Respondent is suffering from a disability as defined in the TRDP. The chair of the District Disability Committee must admit all relevant evidence that is necessary for a fair and complete hearing. The TRE are advisory but not binding on the chair.

Rule 8.07 Notice of Decision

The District Disability Committee must certify its finding regarding disability to BODA, which will issue the final judgment in the matter.

Rule 8.08 Confidentiality

All proceedings before the District Disability Committee and BODA, if necessary, are closed to the public. All matters before the District Disability Committee are confidential and are not subject to disclosure or discovery, except as allowed by the TRDP or as may be required in the event of an appeal to the Supreme Court of Texas.

SECTION 9: DISABILITY REINSTATEMENTS

Rule 9.01 Petition for Reinstatement

(a) An attorney under an indefinite disability suspension may, at any time after he or she has been suspended, file a verified petition with BODA to have the suspension terminated and to be reinstated to the practice of law. The petitioner must serve a copy of the petition on the CDC in the manner required by TRDP 12.06. The TRCP apply to a reinstatement proceeding unless they conflict with these rules.

(b) The petition must include the information required by TRDP 12.06. If the judgment of disability suspension contained terms

or conditions relating to misconduct by the petitioner prior to the suspension, the petition must affirmatively demonstrate that those terms have been complied with or explain why they have not been satisfied. The petitioner has a duty to amend and keep current all information in the petition until the final hearing on the merits. Failure to do so may result in dismissal without notice.

(c) Disability reinstatement proceedings before BODA are not confidential; however, BODA may make all or any part of the record of the proceeding confidential.

Rule 9.02 Discovery

The discovery period is 60 days from the date that the petition for reinstatement is filed. The BODA Clerk will set the petition for a hearing on the first date available after the close of the discovery period and must notify the parties of the time and place of the hearing. BODA may continue the hearing for good cause shown.

Rule 9.03 Physical or Mental Examinations

(a) On written motion by the Commission or on its own, BODA may order the petitioner seeking reinstatement to submit to a physical or mental examination by a qualified healthcare or mental healthcare professional. The petitioner must be served with a copy of the motion and given at least seven days to respond. BODA may hold a hearing before ruling on the motion but is not required to do so.

(b) The petitioner must be given reasonable notice of the examination by written order specifying the name, address, and telephone number of the person conducting the examination.

(c) The examining professional must file a detailed, written report that includes the results of all tests performed and the professional's findings, diagnoses, and conclusions. The professional must send a copy of the report to the parties.

(d) If the petitioner fails to submit to an examination as ordered, BODA may dismiss the petition without notice.

(e) Nothing in this rule limits the petitioner's right to an examination by a professional of his or her choice in addition to any exam ordered by BODA.

Rule 9.04 Judgment

If, after hearing all the evidence, BODA determines that the petitioner is not eligible for reinstatement, BODA may, in its discretion, either enter an order denying the petition or direct that the petition be held in abeyance for a reasonable period of time until the petitioner provides additional proof as directed by BODA. The judgment may include other orders necessary to protect the public and the petitioner's potential clients.

SECTION 10: APPEALS FROM BODA TO THE SUPREME COURT OF TEXAS

Rule 10.01 Appeals to the Supreme Court

(a) A final decision by BODA, except a determination that a statement constitutes an inquiry or a complaint under TRDP 2.10, may be appealed to the Supreme Court of Texas. The clerk of the Supreme Court of Texas must docket an appeal from a decision by BODA in the same manner as a petition for review without fee.

(b) The appealing party must file the notice of appeal directly with the clerk of the Supreme Court of Texas within 14 days of receiving notice of a final determination by BODA. The record must be filed within 60 days after BODA's determination. The appealing party's brief is due 30 days after the record is filed, and the responding party's brief is due 30 days thereafter. The BODA Clerk must send the parties a notice of BODA's final decision that includes the information in this paragraph.

(c) An appeal to the Supreme Court is governed by TRDP 7.11 and the TRAP.

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BEFORE THE PRESIDING DISCIPLINARY JUDGE
OF THE SUPREME COURT OF ARIZONA

IN THE MATTER OF A MEMBER OF THE STATE BAR OF ARIZONA,	**PDJ-2014-** 9026
GARY L. LASSEN **Bar No. 005259**	**COMPLAINT**
Respondent.	State Bar Nos. 11-3805, 13-0301, 13-1205, 13-2214, 13-3323

Complaint is made against Respondent as follows:

GENERAL ALLEGATIONS

1. At all times relevant, Respondent was a lawyer licensed to practice law in the State of Arizona having been first admitted to practice on April 22, 1978.

2. By Final Judgment and Order dated March 13, 2014, Respondent was suspended in PDJ-2013-9068 for a period of Two (2) Years effective May 7, 2014 for violating Rule 42, Arizona Rules of Supreme Court, ERs 1.3, 1.4, 1.5, 1.16, 3.1, 3.2, 5.5, 8.4(c), 8.4(d) and Rule 54(c), Arizona Rules of Supreme Court.

3. A notice of appeal was timely filed on behalf of Respondent and the court denied a motion to stay the execution of the sanction.

4. By Agreement for Discipline by Consent, Respondent was suspended in PDJ-2012- for a period of Thirty (30) Days effective April 28, 2012 for violating Rule

Exhibit
1

42, Arizona Rules of Supreme Court, ERs 1.3, 1.4(a)(2)-(4), 1.4(b), 2.1, 8.1, 8.4(c). Respondent was reinstated on June 25, 2012.

5. By Final Judgment and Order dated December 14, 2009, Respondent was censured (currently, reprimand) and placed on probation for a conviction of extreme DUI, endangerment and leaving the scene of an injury accident in violation of Rule 42, Arizona Rules of Supreme Court, ER 8.4(b), and Rule 53(h)(1), Arizona Rules of Supreme Court.

COUNT ONE (File no. 11-3805/Segal)

6. The Hackberry Elementary School District (the District), acting through its governing board (Board), hired Bradly Ellico (Ellico) as an administrator/principal for a three (3) year term commencing on July 1, 2008.

7. Shortly thereafter, relations between Ellico, individual Board members and parents of District students became strained and the Board ultimately placed Ellico on non-disciplinary paid administrative leave pending completion of an investigation.

8. On November 11, 2009, the Board adopted a statement of charges to terminate Ellico upon the completion of the investigation.

9. In 2009, Respondent initiated a lawsuit against the District, the Board and various members of the Board, in the Mohave County Superior Court case of Ellico v. Hackberry, Case No. 2009-01666 (hereinafter referred to as "2009 Litigation").

10. On July 15, 2011, Ellico initiated a lawsuit against the District, the Board, various members of the Board, and/or Counsel for the named defendants, specifically, Robert D. Haws (Haws) and Gust Rosenfeld, P.L.C. (the Firm) in the

Mohave Superior Court case of Ellico v. Hackberry, Case No. 2011-01182 (hereinafter referred to as "2011 Litigation").

2009 Litigation

11. Attorney Haws and the Firm were retained as defense counsel pursuant to an insurance policy issued by the Arizona Risk Retention Trust for the benefit of the school district.

12. Respondent sought to remove Attorney Haws and Gust Rosenfeld alleging a conflict of interest. The issue was briefed and argued to the trial court.

13. By minute entry of January 8, 2010 [incorrectly dated January 8, 2009], the trial court denied the motion to disqualify.

14. On February 9, 2010, the trial court dismissed a majority of the claims set forth in the Amended Verified Complaint and set an evidentiary hearing on the sole surviving claim, which was for injunctive relief.

15. In June 2010, the trial court held an evidentiary hearing on the issue of the requested injunctive relief and on September 10, 2010, it issued an order and judgment wherein the trial court found a technical violation by the Board of the Open Meetings Law and ordered the Deputy Mohave County Attorney to provide the Board members with training on the Open Meetings Law.

16. Respondent filed a notice of appeal from the trial court's order on behalf of Mr. Ellico resulting in Ellico v. Hackberry, 1 CA-CV 10-0769.

17. On August 7, 2012, the Arizona Court of Appeals, Division One, issued its memorandum decision (the Decision) in which it affirmed, among other things, the trial court's order denying Mr. Ellico's motion to disqualify counsel.

18. On appeal, Respondent argued that the trial court was required to grant the motion to disqualify because of a conflict of interest between the Board and two of its members under to ER 1.7.

19. The Court of Appeals first observed that Ellico would have standing to challenge the defendant's choice of counsel only if Ellico himself had been counsel's past or current client.

20. However, Ellico did not allege that he ever had an attorney-client relationship with defense counsel and he did not allege that the case presented an "extreme circumstance[]" that would otherwise enable him to raise such a challenge as contemplated under *Romley*.

21. The Court of Appeals also noted in a footnote that Respondent seemed to argue that Ellico was entitled to disqualify counsel based on an improper use of public monies to pay for the representation, however he did not cite to any place in the record that showed that public monies had been used for such a purpose.

22. The Court of Appeals also identified numerous deficiencies in Respondent's briefing including, but not limited to:

a. Respondent failed to develop any argument regarding the defendants' failure to file an answer to the complaint filed in the case. Instead, he "simply reiterate[d] the underlying merits of his case, and he appears to generally object to orders made by the trial court."

b. Respondent filed an amended brief that "contains misrepresentations of the record," and "fails in many respects to otherwise comport with the Arizona Rules of Civil Appellate Procedure (ARCAP)." The Court

found this to be "especially troubling" because the Court had struck Respondent's original brief for failure to comply with those rules.

c. Respondent requested relief that was "improper in civil appellate practice." For example, he asked the Court to order the removal of certain of the Board members from their positions.

23. Finally, the Court of Appeals granted the Appellees their costs and reasonable fees as provided for in ARCAP 21, stating as follows:

> The record reveals that Ellico commenced and continued this litigation primarily for delay and harassment, and he unreasonably expanded the proceedings by seeking to disqualify opposing counsel. Further, his brief unreasonably failed to comply with ARCAP 13(a). Even after his opening brief was struck for failure to comply with ARCAP, his subsequent brief did not comply with ARCAP.

2011 Litigation

24. On October 3, 2011, Respondent filed an Amended Verified Complaint in the 2011 Litigation in which he added additional claims for damages.

25. Respondent also added Haws and the Firm as defendants in the Amended Complaint did not include any specific factual allegations against Haws and the Firm.

26. Respondent did not serve Haws or the Firm with the Complaint.

27. Because Respondent named Haws and the Firm as defendants in the Amended Verified Complaint, the Firm did not represent the Board or any of the Board members in the 2011 Litigation.

28. After answering the Amended Complaint, the opposing parties filed motions for judgment on the pleadings.

29. In response, Respondent filed their own motion for judgment on the pleadings, motion for summary judgment and a motion to disqualify the Board's attorneys attorney based upon allegations of a conflict of interest.

30. The trial court denied the disqualification motion and dismissed Ellico's claims with prejudice and awarded the opposing parties their attorney's fees and costs.

31. Respondent filed a notice of appeal from the trial court's order on behalf of Mr. Ellico resulting in Ellico v. Hackberry, 1 CA-CV 13-0025.

32. On February 4, 2014, the Arizona Court of Appeals, Division One, issued its memorandum decision (the Decision) in which it affirmed, among other things, the trial court's order denying Mr. Ellico's motion to disqualify counsel and the trial court's determination that Ellico's claims were barred for the failure to comply with the Notice of Claim statutes governing Ellico's claims.

33. The Court of Appeals further found that "Ellico's continued pursuit of waived claims lacks substantial justification and has unreasonably expanded this litigation."

34. Finally, the Court of Appeals awarded the opposing parties attorney's fees and costs pursuant to Arizona Revised Statute §12-349(B) and allocated the award equally between Ellico and Respondent.

35. In his response to bar counsel's screening letter, Respondent included copies of the briefs that he filed in the appeal from the trial court orders entered in the 2009 Litigation, which Respondent claims "addresses this issue in full"—this

issue being the alleged unethical impropriety of Haws' and the Firm's representation of the Board and the various Board members which the Court of Appeals ultimately disagreed.

36. By engaging in the above-referenced conduct, Respondent violated a number of ethical rules including, but not limited to the following:

A. Rule 42, Ariz. R. Sup. Ct., ER 1.1 (Competence) as Respondent's appellate brief in 1 CA-CV 10-0769 unreasonably failed to comply with the requirements of ARCAP 13(a), even after the Arizona Court of Appeals struck Respondent's opening brief and he was given another opportunity to file the brief. Similarly, Respondent inexplicably pursued statutorily barred claims which failed as a result of the failure to comply with the Notice of Claim statutes.

B. Rule 42, Ariz. R. Sup. Ct., ER 3.1 (Meritorious Claims and Contentions) as Respondent prepared and filed a complaint and amended complaint in 2009, both of which were dismissed by the trial court as having no basis in fact or law. Respondent then filed, not one, but two appellate briefs that "unreasonably failed" to comply with ARCAP 13(a). As a result, the Court of Appeals awarded the appellees their costs and fees, which were equally allocated between the Respondent and his client. Regarding the 2011 Litigation, Respondent again named the defendants' counsel and the Firm as defendants in an effort to disqualify them as counsel, when there was no basis in fact or law to do so. Finally, Respondent inexplicably pursued statutorily barred claims

and unreasonably expanded the litigation by appealing the trial court's rulings regarding the failure to comply with the Notice of Claim statutes and erroneous attempt to disqualify the attorneys in the 2011 Litigation.

C. Rule 42, Ariz. R. Sup. Ct., ER 3.3(a)(1) (Candor Toward the Tribunal) as Respondent filed an amended brief with the Arizona Court of Appeals that misrepresented the record and failed to comply with the requirements of ARCAP. This, despite that the Court of Appeals struck Respondent's original brief for failure to comply with the rules and gave him an opportunity to correct the deficiencies by filing an amended brief.

D. Rule 42, Ariz. R. Sup. Ct., ER 4.1(a) (Truthfulness in Statements to Others) as Respondent filed an amended brief with the Arizona Court of Appeals that misrepresented the record and failed to comply with the requirements of ARCAP. This, despite that the Court of Appeals struck Respondent's original brief for failure to comply with the rules and gave him an opportunity to correct the deficiencies by filing an amended brief.

E. Rule 42, Ariz. R. Sup. Ct., ER 8.4(c) (Misconduct) as Respondent filed an amended brief with the Arizona Court of Appeals that misrepresented the record and failed to comply with the requirements of ARCAP. This, despite that the Court of Appeals struck Respondent's original brief for failure to comply with the

rules and gave him an opportunity to correct the deficiencies by filing an amended brief.

F. Rule 42, Ariz. R. Sup. Ct., ER 8.4(d) (Misconduct) as Respondent prepared and filed a complaint and amended complaint in 2009, both of which were dismissed by the trial court as having no basis in fact or law. Respondent then filed, not one, but two appellate briefs that "unreasonably failed" to comply with ARCAP 13(a). As a result, the Court of Appeals awarded the appellees their costs and fees, which were equally allocated between the Respondent and his client. Regarding the 2011 Litigation, Respondent again named the defendants' counsel and the Firm as defendants in an effort to disqualify them as counsel, when there was no basis in fact or law to do so. Finally, Respondent inexplicably pursued statutorily barred claims and unreasonably expanded the litigation by appealing the trial court's rulings regarding the failure to comply with the Notice of Claim statutes and erroneous attempt to disqualify the attorneys in the 2011 Litigation.

COUNT TWO (File no. 13-0301/Deese)

37. By and between January 2008 and July 2012, Respondent represented Complainant in a contingency fee representation regarding a dispute with Wells Fargo Bank.

38. As part of the representation, Respondent required a Seven Thousand Five Hundred Dollar ($7500.00) non-refundable retainer.

39. By letter dated January 21, 2008, Respondent explained that the non-refundable deposit or fee is for "the filing cost and service of process fee attendant to initiating a lawsuit against Wells Fargo and named individuals." The letter further explained that "[s]ubsequent fees and costs particularly those of expert witnesses are the client's responsibility and should be paid as they are incurred."

40. Respondent filed the United States Federal Court lawsuit of *Deese v. Wells Fargo Bank, et.al.*, CV-08-00539.

41. In or around July 10, 2009, Respondent provided Complainant with billing records detailing the legal services purportedly performed in January and February 2008 along with the fees and costs associated with those services. The total bill was Seven Thousand Five Hundred Dollar ($7500.00), leaving a balance of zero.

42. Over the course of the representation, Respondent provided Complainant with billing records detailing the purported costs incurred during the representation.

43. Over the course of the representation, Complainant paid Respondent no less than Thirty Two Thousand Dollars ($32,000.00) for purported costs and expenses.

44. On or before June 1, 2010, Complainant requested a full accounting of all money paid to Respondent.

45. Respondent's legal assistant, Stephanie Somplack, provided Complainant with billing records by e-mail and indicated that she intended to perform a thorough audit of the billing records.

46. The billing records contained a number of repeated, omitted or disputed costs including, but not limited to, a double billing for a Mediation Fee to Scott and Skelly in the amount of One Thousand Eight Hundred Sixty Seven Dollars and 50 ($1867.50), legal fees of One Hundred Forty Seven Dollar and 50/100 ($147.50) incurred for reviewing the transcript of a deposition, fees and costs of Two Thousand Six Hundred Forty Nine Dollars and 95/100 ($2649.95) associated with one expert John V. Scialli, a One Thousand Fifty Dollar ($1050.00) "prepayment" associated with a purported deposition of Dr. Nelson-Spiers, a Two Hundred Three Dollar ($203.00) payment for a purported video deposition of Travis Clements and a One Thousand Dollar ($1000.00) payment to a Barry W. Linden which evidenced by a check drawn on the law firm's operating bank account but does not appear on any of the accountings provided to Complainant.

47. On or about October 13, 2010, Respondent filed an appeal with the Ninth Circuit of the United States Court of Appeal after receiving an unfavorable ruling on a motion for summary judgment in the trial court.

48. By e-mail dated May 10, 2011, Complainant requested a copy of the depositions of two individuals including Travis Clements.

49. Despite repeated demands, Complainant has not been provided with a copy of the video deposition of Travis Clements.

50. In his initial response to the State Bar, Respondent acknowledges that he did not purchase the video deposition of Travis Clements and was therefore unable to provide Complainant with a copy.

51. In or around December 12, 2011, the Ninth Circuit of the United States Court of Appeal upheld the unfavorable ruling on a motion for summary judgment of the lower court.

52. In March 2012, Respondent entered into an Agreement for Discipline by Consent requiring Respondent to serve a 30-day Suspension effective April 28, 2012 for violations of 1.3, 1.4(a)(2)-(4), 1.4(b), 2.1, 8.1, 8.4(c).

53. On April 24, 2012, Susan Weber, an attorney and friend of Complainant's, documented a conversation between Complainant and Respondent wherein Complainant informed Respondent that she googled herself and discovered the Ninth Circuit's affirmation of the lower court's unfavorable ruling.

54. The Weber e-mail continues by documenting Respondent's response which was that Respondent received the ruling "a few weeks ago" and that Respondent had been very busy.

55. The Weber e-mail closes with a demand for an accurate accounting of all client funds related to the representation along with the supporting invoices and proofs of payment including, but not limited to:

a. Any and all court reporting services;

b. Any and all doctor's reports;

c. Any and all airline tickets and hotel bills for travel;

d. Any and all telephone bills;

e. Any and all photocopying; and

f. Any other miscellaneous expenses such as postage.

56. Later that day, Respondent responded and indicated that he would begin assembling the information.

57. Respondent further claimed that "(he has) been attempting to explore other avenues for further action and wanted a detailed plan of action to lay out for consideration."

58. Still later that day, when asked for further information regarding the "options", Respondent stated "I will respond in detail regarding all options that I have looked into including going to the U.S. Supreme Court and pursuing a separate case against (Complainant's) former supervisor."

59. When asked when they should expect a response, Respondent stated "no later than next week".

60. In an e-mail dated May 3, 2012, Complainant asked Respondent a number of questions including "What have you done on the case since Dec 2011?" and Respondent responded stating "...i am working on the list of options including a separate case against Reede Reynolds. My anger against the Court allowing Wells to escape by doing nothing maked (sic) my blood pressure swell and has caused me to have random anger outbursts."

61. On May 4, 2012, Weber e-mailed Respondent and again requested the accounting to no avail.

62. On May 5, 2012, Complainant e-mailed Respondent acknowledging his stress but again requested information.

63. Later that day, Respondent simply stated "thank you for your concern; I am working on putting the report for you together;".

64. On May 7, 2012, Weber e-mailed Respondent memorializing that Respondent failed to provide the accounting and requested additional information regarding the status of his efforts.

65. Later that day, Respondent again responded that he was "working on a comprehensive report for you both top (sic) be completed this week."

66. Complainant responded later that day asking "You are causing me to have an anxiety attack, I am asking just one more time to answer the freakin question??? What is your problem???"

67. After a back and forth between Weber, Complainant and Respondent, Respondent stated "I will respond with a detailed narrative by week's end, and then I propose we all three have a lengthy conference call to discuss all matters."

68. After being informed that Complainant was scheduled to have major surgery on May 29th, Respondent stated the following in a response e-mail dated May 9, 2012 "My prayers are with you. I will be working most of Friday and Saturday, if necessary, to get you everything we have discussed. I will include a short to the point summary and detail of the legal issues as well. This case and the injustice that has occurred to date is appalling."

69. On May 12, 2012, Respondent e-mailed Complainant and stated the following:

> I have been doing legal research yesterday and am excited about pushing toward a jury trial moving in state court to get away from the 'bitch" judge and get to a trial SOONER.. I am anxious to get this going in court in HJune. (sic) I will still send you the full analysis of the federal discrimination analysis and the advice i received regarding

getting to the Supreme court including pros and cons. Immediacy is what you need and deserve. More to come soon.

70. When asked about details regarding the pursuit of the lawsuit on May 15, 2012, Respondent stated, in part, "I will send update with specific strategy options as discussed in early June."

71. On June 25, 2012, Respondent was reinstated to the practice of law.

72. On July 14, 2012, Complainant terminated Respondent.

73. Later that day, Respondent responded "I am working on your request, and Ii (sic) was already working on the issues and options we discussed in April and May."

74. On December 3, 2012, Weber again requested a full accounting for the legal services and costs purported provided along with any supporting documentation to no avail.

75. On December 31, 2012, Weber again requested a full accounting for the legal services and costs in an e-mail entitled "Still no response from you."

76. Later that day, Respondent responded claiming that he was out with the flu but that he was working on it and will respond "as soon as I can, and in any event, before the 15th."

77. In his initial response to the State Bar dated May 6, 2013, Respondent states that "[t]his was a case in which the costs far exceeded the amount paid by the client" but failed to provide any accounting, explanation or supporting documentation regarding the purported costs incurred during the representation.

78. Respondent further indicated that he intended to provide the State Bar with an "amended, supplemental response.

79. On August 19, 2013, the State Bar requested additional information from Respondent including, but not limited to:

a. "A copy of the representation letter for (Complainant)";

b. "Copies of all invoices/billing statement/time records relating to the representation of (Complainant)";

c. "Copies of all bank statements/client ledgers for your Trust account and relating to the representation of (Complainant) and evidencing all payments made by (Complainant) to you, all payments made by you on her behalf, and the balance, if any, of funds that you currently hold relating to the representation";

d. Correspondence between you and (Complainant) relating to the representation";

e. "The 'amended, supplemental response' that you reference in your May 6th letter, which I have not received";

f. "Answers to the following questions:

i. When did you advise the client that you were suspended?

ii. How did you advise the client of the suspension?

iii. Provide any supporting documentation regarding the manner in which you related this information."

80. On September 3, 2013, Respondent responded by providing a copy of the engagement letter and representation agreement and further explained that he anticipated being interviewed and thought that the production of documents could take place as part of the interviewing process.

81. In his letter dated September 3, 2013, Respondent finally stated "I had assembled information regarding cost expensing and will retrieve that effort and forward it under separate cover letter."

82. In an e-mail to the State Bar dated September 26, 2013, Respondent again indicated that he would send the requested information no later than September 30, 2013.

83. On November 6, 2013, the State Bar sent Karen Clark, Respondent's limited representation attorney in PDJ 2013-9068 (SB Files 11-3770 and 12-2382), a letter referring to all of the prior requests and promises and, again, requested the information.

84. On November 14, 2013, Ms. Clark provided notice to the State Bar that she no longer represented Respondent.

85. On November 22nd, December 12th and December 17th 2013, the State Bar sent Scott Bennett and James Belanger, Respondent's attorneys of record in PDJ 2013-9068 (SB Files 11-3770 and 12-2382), an e-mail requesting a response to the State Bar's prior requests.

86. On December 19, 2013, the State Bar e-mailed and hand-delivered another copy of the above listed requests for information to Respondent and his attorneys of record in PDJ 2013-9068 (SB Files 11-3770 and 12-2382) along with notification that the State Bar would include an ethical violation for Respondent's failure to respond.

87. To date, the State Bar has not received any response from Respondent or any of his prior attorneys.

88. By engaging in the above-referenced conduct, Respondent violated a number of ethical rules including, but not limited to the following:

A. Rule 42, Ariz. R. Sup. Ct., ER 1.2 (Client Authority) as Respondent repeatedly failed to abide by the client's instructions during the representation.

B. Rule 42, Ariz. R. Sup. Ct., ER 1.3 (Diligence) as Respondent consistently failed to act diligently during the representation.

C. Rule 42, Ariz. R. Sup. Ct., ER 1.4(a) (Communication) as Respondent failed to reasonably communicate with the client during the representation.

D. Rule 42, Ariz. R. Sup. Ct., ER 1.5(a) (Fees) as Respondent charged his clients an unreasonable fee for the representation.

E. Rule 42, Ariz. R. Sup. Ct., ER 1.16 (Terminating the Representation) as Respondent failed to take the steps reasonably necessary to protect the client after the termination of the representation.

F. Rule 42, Ariz. R. Sup. Ct., ER 5.5 (Practicing Law Without a License) as Respondent engaged in the practice of law while suspended.

G. Rule 42, Ariz. R. Sup. Ct., ER 8.4(c) (Misconduct) as Respondent frequently engaged in conduct involving dishonesty, fraud, deceit or misrepresentations.

COUNT THREE (File no. 13-1205/Navarrete)

89. In June 2009, Respondent filed an employment discrimination and wrongful termination lawsuit against Wells Fargo Bank on behalf of Complainants.

90. Wells Fargo filed a Motion to Dismiss and Respondent did not respond. After the motion was granted as to one of the claims, Wells Fargo filed an answer to the remaining count and requested attorney's fees and costs.

91. The remaining claim was dismissed without prejudice from the inactive calendar for lack of prosecution.

92. In June 2010, Wells Fargo filed a Motion for an award of attorney's fees and costs against Complainants and Respondent.

93. Respondent did not file a response and in late July, Wells Fargo was awarded attorney's fees and costs in the amount of Forty Four Thousand Nine Hundred Thirty Four Dollars and 80/100 ($44,934.80) against Complainants and Respondent, jointly and severally.

94. In August 2010, Wells Fargo filed a proposed form of judgment which was objected to by Respondent based, in part, on Respondent's mistake or inadvertence in filing a response.

95. Respondent requested a new trial which was denied on November 9, 2010.

96. On January 28, 2011, the court issued an order denying the new trial and reaffirming the judgment of Forty Four Thousand Nine Hundred Thirty Four Dollars and 80/100 ($44,934.80) against Complainants and Respondent.

97. On February 25, 2011, Respondent filed a Notice of Appeal and Division One of the Court of Appeals affirmed the trial court's ruling in all respect.

98. On June 14, 2012, Respondent filed a Notice of Bankruptcy in the lower court.

99. In his August 6, 2013 response to the State Bar, Respondent claims that the Complainants were unsophisticated and unable to provide information necessary to pursue the claim.

100. Respondent further claims that the judge took an "unwarranted position" against he and his clients and claims that he pursued the appeal at his own expense.

101. Finally, Respondent claims that his clients were misled by individuals at the State Bar regarding the status of his license during the representation and claims that "(he) will be providing additional information in separate correspondence addressing the ERs" and "will provide supplemental information in the next day or two regarding more details."

102. On November 8, 2013, the State Bar sent Karen Clark, Respondent's limited representation attorney in PDJ 2013-9068 (SB Files 11-3770 and 12-2382), requesting additional information from Respondent about the status of the affirmed judgment at issue in the Navarette matter and a second unrelated judgment out of the Third Judicial District in Anchorage in the case of Birch, Horton, Bittner, Inc. v. Gary Lassen and Gary Lassen, PLC, 3AN-11-10939 CI.

103. On November 14, 2013, Ms. Clark provided notice to the State Bar that she no longer represented Respondent.

104. On November 25th, December 12th and December 17th 2013, the State Bar sent Scott Bennett and James Belanger, Respondent's attorneys of record in PDJ

2013-9068 (SB Files 11-3770 and 12-2382), an e-mail requesting a response to the State Bar's prior requests.

105. On December 19, 2013, the State Bar e-mailed and hand-delivered another copy of the above listed requests for information to Respondent and his attorneys of record in PDJ 2013-9068 (SB Files 11-3770 and 12-2382) along with notification that the State Bar would include an ethical violation for Respondent's failure to respond.

106. To date, the State Bar has not received any response from Respondent or any of his prior attorneys.

107. By engaging in the above-referenced conduct, Respondent violated a number of ethical rules including, but not limited to the following:

A. Rule 42, Ariz. R. Sup. Ct., ER 1.1 (Competence) as Respondent did not exhibit the knowledge or preparation necessary for the representation.

B. Rule 42, Ariz. R. Sup. Ct., ER 1.2 (Client Authority) as Respondent failed to abide by the client's instructions throughout the representation.

C. Rule 42, Ariz. R. Sup. Ct., ER 1.3 (Diligence) as Respondent failed to act diligently during the representation during the representation.

D. Rule 42, Ariz. R. Sup. Ct., ER 1.4 (Communication) as Respondent failed to reasonably communicate with the client during the representation.

E. Rule 42, Ariz. R. Sup. Ct., ER 1.7(a)(2) as Respondent had a concurrent conflict of interest during the representation.

F. Rule 42, Ariz. R. Sup. Ct., ER 3.1 (Meritorious Claims and Contentions) as Respondent failed to timely file responsive and other pleadings resulting in sanctions being imposed against Respondent and his client.

G. Rule 42, Ariz. R. Sup. Ct., ER 3.2 (Expediting Litigation) as Respondent failed to timely file responsive and other pleadings resulting in sanctions being imposed against Respondent and his client.

H. Rule 42, Ariz. R. Sup. Ct., ER 8.4(d) (Misconduct) as Respondent failed to timely file responsive and other pleadings resulting in sanctions being imposed against Respondent and his client.

COUNT FOUR (File no. 13-2214/Jellison)

108. On April 9, 2012, Respondent filed a complaint on behalf of his client, Andrew Goode, in the Pinal County Superior Court lawsuit of Goode v. Keys, et.al., CV 2012-00959 (hereinafter referred to as "Lawsuit").

109. At all times pertinent, Respondent was the sole attorney of record in the lawsuit.

110. Mr. Goode was injured while working as a Deputy for Pinal County and arresting an individual at a Country Thunder event. The claim was accepted by the Arizona Counties Insurance Pool (hereinafter referred to as "ACIP") as a compensable Workers Compensation claim.

111. As the claim was accepted by ACIP, Respondent and his client had certain statutory obligations pursuant to Arizona Revised Statute § 23-1023.

112. On or about April 12, 2012, James Jellison (hereinafter referred to as "Jellison") notified Respondent that he represented the Pinal County Sheriff's Department.

113. Effective April 28, 2012, Respondent was suspended for Thirty (30) days by consent in SB File 10-1508 for violations of 1.3, 1.4(a)(2)-(4), 1.4(b), 2.1, 8.1, 8.4(c).

114. On June 25, 2012, Respondent was reinstated to the practice of law.

115. On or about August 24, 2012, the Court issued a Notice which set the matter for a Dismissal Hearing without Prejudice on September 25, 2012 due to Respondent's failure to serve the Defendants.

116. On September 24, 2012, Respondent contemporaneously filed a Notice of Change of Judge and Motion to Extend Time For Service.

117. On September 25, 2012, neither Respondent nor his client appeared at the Dismissal Hearing.

118. On September 25, 2012, Jellison entered a special limited appearance and filed affidavits of the individually named Pinal County employees attesting to their availability for service at their publically disclosed business addresses.

119. Based upon the Notice of Change of Judge, the Court referred the case to the Presiding Judge and was reassigned.

120. On October 3, 2012, the Court denied Respondent's Motion to Extend Time for Service and rescheduled the Dismissal Hearing for November 19, 2012.

121. On October 15, 2012, Jellison filed a Motion to Dismiss Pinal County and certain individually named Defendants collectively referred to as the "Pinal County Defendants".

122. On November 8, 2012, Respondent filed a two-page untimely Response to the Pinal County Defendants' Motion to Dismiss. While Respondent explained that Plaintiffs filed supplemental Notices of Claim and intended to file an Amended Complaint, the untimely response did not provide any "good cause" as to why Respondent did not use any efforts to serve the Pinal County Defendants during the 120 day statutory period set forth in Rule 4, Ariz. R. Civ. P. The response also alleges that service of the complaint was completed on certain unspecified Defendants.

123. On November 16, 2012, Respondent filed a First Amended Complaint.

124. On November 19, 2012, the Court held the Dismissal Hearing wherein Respondent admitted that he did not serve the Pinal County Defendants during the statutory period but that by filing an Amended Complaint, the 120 day statutory period is extended or abated. Following oral argument, the Court rejected Respondent's argument and prepared a minute entry dismissing the matter as to the Pinal County Defendants.

125. On December 13, 2012, the Court signed an order stating "that Defendants Pinal County, Pinal County Sheriff's Office, Paul Babeu, Steve Henry, Blake King, Michael Hughley, Brandi Clark and Paul Ahler are dismissed from this action, without prejudice."

126. On February 28, 2013, Respondent filed misdated Applications for Entry of Default against four of the Pinal County Defendants.

127. In support of his applications, Respondent claimed that the Pinal County Defendants were served and failed to answer the First Amended Complaint.

128. The February 2013 pleadings did not result in the entry of default judgments.

129. On June 13, 2013, Respondent filed properly dated Notices of Application for Default, Applications for Entry of Default and sworn "Affidavits On Default" against the same four Pinal County Defendants.

130. The Affidavit pleadings were filed under penalty of perjury and fail to reference the prior dismissal documents, the dismissal hearing or the dismissal order and inaccurately states that the respective Defendants "failed to plead or otherwise defend".

131. The Notice pleadings also failed to reference the prior dismissal documents, the dismissal hearing or the dismissal order and inaccurately stated that the respective Defendants "failed to plead or otherwise defend".

132. The June 2013 pleadings did result in the entry of default judgments against Pinal County, Michael Hughley and Brandi Clark.

133. While included in the mailing certificate of the default pleadings, Jellison did not receive any of the February 28, 2013 or June 13, 2013 default pleadings.

134. On June 14, 2013, Respondent filed a Rule 41 Notice of Dismissal with Prejudice against the private entity.

135. On June 28, 2013, Jellison mailed Respondent a letter acknowledging receipt of the June 14th Rule 41 Notice of Dismissal.

136. Jellison also clarified that, while Complainant was listed in the mailing certificate as "Attorney for Defendants", Jellison only represented the dismissed Pinal County Defendants.

137. On July 11, 2013, Respondent filed Notices of Application for Default, Applications for Entry of Default and sworn "Affidavits On Default" against two Pinal County Defendants.

138. The Affidavit pleadings were filed under penalty of perjury and fail to reference the prior dismissal documents, the dismissal hearing or the dismissal order and inaccurately states that the respective Defendants "failed to plead or otherwise defend".

139. The Notice pleadings also failed to reference the prior dismissal documents, the dismissal hearing or the dismissal order and inaccurately stated that the respective Defendants "failed to plead or otherwise defend".

140. The July 2013 pleadings did result in the entry of default judgments against the two Pinal County Defendants.

141. On July 18, 2013, Jellison wrote Respondent demanding the production of any default pleading or documents as he was unaware of any of Respondent's prior efforts to obtain a default judgment.

142. Jellison further demanded that Respondent file the appropriate paperwork and take all efforts to undo any attempts to obtain a default judgment against any of the Pinal County Defendants.

143. On July 31, 2013, Respondent wrote Jellison stated, in part, the following:

There appears to be some confusion on your part as to the status of the Pinal Defendants. After the court dismissed the original Complaint without prejudice, a new Complaint was filed and timely served on multiple Pinal County Defendants on different dates. To date, no named county defendant has filed an Answer. Other defendants in this matter have also been served, and one settlement has been reached.

It was my intent to get the attention of the Pinal County defendants by initiating the default process. It appears and is confirmed by your letter that there is some confusion among the County Defendants as to their status. Please identify who you represent and I will provide you the service information immediately.

144. On August 6, 2013, Jellison replied stating, in pertinent part, "I...assure you there is now no confusion on my part about what you have done...Your pursuit of default judgments in a case where my clients made a limited appearance and, through that appearance, obtained a dismissal is beyond my comprehension. You failure to send me copies of your Affidavits and Applications when you know I have made a limited appearance in the matter on behalf of these already dismissed Pinal County Defendants is also beyond my comprehension. Your July 31, 2013 letter provides no cogent explanation or justification for your behavior in this regard."

145. On November 7, 2013, the State Bar sent Karen Clark, Respondent's limited representation attorney in PDJ 2013-9068 (SB Files 11-3770 and 12-2382), requesting additional information from Respondent.

146. On November 14, 2013, Ms. Clark provided notice to the State Bar that she no longer represented Respondent.

147. On November 22nd, December 12th and December 17th 2013, the State Bar sent Scott Bennett and James Belanger, Respondent's attorneys of record in PDJ 2013-9068 (SB Files 11-3770 and 12-2382), an e-mail requesting a response to the State Bar's prior requests.

148. On December 19, 2013, the State Bar e-mailed and hand-delivered another copy of the above listed requests for information to Respondent and his attorneys of record in PDJ 2013-9068 (SB Files 11-3770 and 12-2382) along with notification that the State Bar would include an ethical violation for Respondent's failure to respond.

149. To date, the State Bar has not received any response from Respondent or any of his prior attorneys.

150. By engaging in the above-referenced conduct, Respondent violated a number of ethical rules including, but not limited to the following:

A. Rule 42, Ariz. R. Sup. Ct., ER 1.2 (Client Authority) as Respondent failed to abide by the client's instructions during the representation.

B. Rule 42, Ariz. R. Sup. Ct., ER 1.3 (Diligence) as Respondent failed to act diligently during the representation.

C. Rule 42, Ariz. R. Sup. Ct., ER 3.1 (Meritorious Claims and Contentions) as Respondent pursued non-meritorious claims and default judgments.

D. Rule 42, Ariz. R. Sup. Ct., ER 3.3 (Candor Toward the Tribunal) as Respondent knowingly made a false statement of

fact or law to the tribunal regarding Respondent's pursuit of non-meritorious claims and default judgments.

E. Rule 42, Ariz. R. Sup. Ct., ER 3.4 (Fairness to Opposing Party and Counsel) as Respondent filed inaccurate and false pleadings and knowingly disobeyed an obligation under the rules of a tribunal.

F. Rule 42, Ariz. R. Sup. Ct., ER 8.4(d) (Misconduct) as Respondent repeatedly engaged in conduct that was prejudicial to the administration of justice.

COUNT FIVE (File no. 13-3323/Warzynski)

151. The State Bar incorporates all of the allegations in Count 5 as if plead in Count Five.

152. On February 12, 2013, ACIP retained Complainant to address the lien issues and Respondent's violation of Arizona Revised Statute § 23-1023.

153. On April 8, 2013, Complainant filed a Motion to Intervene.

154. On April 18, 2013, Respondent confirmed to Complainant that he settled a portion of the claim without notice to or authorization by ACIP.

155. On May 14, 2013, Complainant met with Respondent and again confirmed that Respondent settled the claims with one of the parties for Twenty Three Thousand Five Hundred Dollars ($23,500.00) without notice to or authorization by ACIP.

156. Between June and October 2013, Complainant and Respondent have written correspondence regarding Respondent's unauthorized settlement and subsequent unaccounted for distribution(s) of the settlement proceeds.

157. On December 5, 2013, the State Bar sent Scott Bennett, Respondent's attorney of record in PDJ 2013-9068 (SB Files 11-3770 and 12-2382) the initial screening letter requesting that Respondent provide the State Bar with a request within twenty days.

158. On January 15, 2014, the State Bar sent Scott Bennett a second letter requesting a response within ten days and notifying Respondent and his attorney that the State Bar would include an additional ethical violation if Respondent failed to respond within the ten day period.

159. To date, the State Bar has not received any response from Respondent or any of his prior attorneys.

160. By engaging in the above-referenced conduct, Respondent violated a number of ethical rules including, but not limited to the following:

A. Rule 42, Ariz. R. Sup. Ct., ER 1.1 (Competence) as Respondent did not provide competent representation to his client as he failed to comply with the statutory requirements in a Workman's Compensation Claim involving an Insurance Pool such as ACIP.

B. Rule 42, Ariz. R. Sup. Ct., ER 1.3 (Diligence) as Respondent consistently failed to act diligently throughout the lawsuit and his representation of his clients.

C. Rule 42, Ariz. R. Sup. Ct., ER 3.1 (Meritorious Claims and Contentions) as Respondent meritless claims and unauthorized defaults on behalf of his clients.

D. Rule 42, Ariz. R. Sup. Ct., ER 3.2 (Expedited Litigation) as Respondent failed to make reasonable efforts to expedite litigation consistent with the interests of his clients.

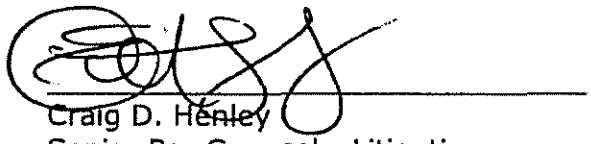
E. Rule 42, Ariz. R. Sup. Ct., ER 5.5 – Respondent engaged in the practice of law as defined by Rule 31, Ariz. R. Sup. Ct., during a period of suspension.

F. Rule 42, Ariz. R. Sup. Ct., ER 8.1 – Respondent knowingly failed to respond to a lawful demand for information by the disciplinary authority.

G. Rule 42, Ariz. R. Sup. Ct., ER 8.4(d) (Misconduct) as Respondent engaged in conduct that was prejudicial to the administration of justice.

H. Rule 54(d)(2) Ariz. R. Sup. Ct., Respondent failed to promptly respond to a request by the disciplinary authority for information relevant to pending charges, complaints or matters under investigation concerning Respondent's conduct.

DATED this _____ day of March, 2014.



Craig D. Henley
Senior Bar Counsel - Litigation

Original filed with the Disciplinary Clerk of
the Office of the Presiding Disciplinary Judge
of the Supreme Court of Arizona
this _____ day of March, 2014.

by:_____
CDH:dds

BEFORE THE ATTORNEY DISCIPLINE PROBABLE CAUSE COMMITTEE OF THE SUPREME COURT OF ARIZONA

IN THE MATTER OF A MEMBER OF THE STATE BAR OF ARIZONA,

GARY L. LASSEN,
Bar No. 005259

Respondent.

No. 11-3805

PROBABLE CAUSE ORDER

The Attorney Discipline Probable Cause Committee of the Supreme Court of Arizona ("Committee") reviewed this matter on December 13, 2013, pursuant to Rules 50 and 55, Ariz. R. Sup. Ct., for consideration of the State Bar's Report of Investigation and Recommendation.

By a vote of 8-0-1[1], the Committee finds probable cause exists to file a complaint against Respondent in File No. 11-3805.

IT IS THEREFORE ORDERED pursuant to Rules 55(c) and 58(a), Ariz. R. Sup. Ct., authorizing the State Bar Counsel to prepare and file a complaint with the Disciplinary Clerk.

Parties may not file motions for reconsideration of this Order.

DATED this 20th day of December, 2013.

Daisy Flores/kmm
Daisy Flores, Vice Chair
Attorney Discipline Probable Cause Committee
of the Supreme Court of Arizona

[1] Committee member Judge Lawrence Winthrop did not participate in this matter.

Original filed this 20th day
of December, 2013, with:

Lawyer Regulation Records Department
State Bar of Arizona
4201 North 24th Street, Suite 100
Phoenix, Arizona 85016-6266

Copy mailed this 23rd day
of December, 2013, to:

Gary L.Lassen
Law Office of Gary Lassen PLLC
1234 South Power Road,
Suite 254
Mesa, Arizona 85206-3761
Respondent

Copy emailed this 23rd day
of December, 2013, to:

Attorney Discipline Probable Cause Committee
of the Supreme Court of Arizona
1501 West Washington Street, Suite 104
Phoenix, Arizona 85007
E-mail: ProbableCauseComm@courts.az.gov

Lawyer Regulation Records Manager
State Bar of Arizona
4201 North 24th Street, Suite 100
Phoenix, Arizona 85016-6266

by: _____

FILED

MAR 21 2014

STATE BAR OF ARIZONA

BY

BEFORE THE ATTORNEY DISCIPLINE PROBABLE CAUSE COMMITTEE OF THE SUPREME COURT OF ARIZONA

IN THE MATTER OF A MEMBER OF THE STATE BAR OF ARIZONA,

GARY L. LASSEN,
Bar No. 005259,

Respondent.

Nos. 13-0301, 13-1205, 13-2214 and 13-3323

PROBABLE CAUSE ORDER

The Attorney Discipline Probable Cause Committee of the Supreme Court of Arizona ("Committee") reviewed these matters on March 14, 2014, pursuant to Rules 50 and 55, Ariz. R. Sup. Ct., for consideration of the State Bar's Report of Investigation and Recommendations.

By a vote of 7-0-2[1], the Committee finds probable cause exists to file a complaint against Respondent in File No's. 13-0301, 13-1205, 13-2214 and 13-3323.

IT IS THEREFORE ORDERED pursuant to Rules 55(c) and 58(a), Ariz. R. Sup. Ct., authorizing the State Bar Counsel to prepare and file a complaint with the Disciplinary Clerk.

Parties may not file motions for reconsideration of this Order.

DATED this 20 day of March, 2014.

Lawrence F. Winthrop

Judge Lawrence F. Winthrop, Chair
Attorney Discipline Probable Cause Committee
of the Supreme Court of Arizona

[1] Committee members Karen E. Osborne and Ben Harrison did not participate in this matter.

Original filed this 21st day
of March, 2014, with:

Lawyer Regulation Records Department
State Bar of Arizona
4201 North 24th Street, Suite 100
Phoenix, Arizona 85016-6266

Copy mailed this 24th day
of March, 2014, to:

Gary L. Lassen
Law Office of Gary Lassen PLLC
1234 South Power Road, Suite 254
Mesa, Arizona 85206-3761
Respondent

Copy emailed this 24th day
of March, 2014, to:

Attorney Discipline Probable Cause Committee
of the Supreme Court of Arizona
1501 West Washington Street, Suite 104
Phoenix, Arizona 85007
E-mail: ProbableCauseComm@courts.az.gov

Lawyer Regulation Records Manager
State Bar of Arizona
4201 North 24th Street, Suite 100
Phoenix, Arizona 85016-6266

by: _____

IN THE
SUPREME COURT OF THE STATE OF ARIZONA
BEFORE THE OFFICE OF THE PRESIDING DISCIPLINARY JUDGE
1501 W. WASHINGTON, SUITE 102, PHOENIX, AZ 85007-3231

IN THE MATTER OF A SUSPENDED MEMBER OF THE STATE BAR OF ARIZONA, **GARY L. LASSEN,** **Bar No. 005259** Respondent.	**PDJ 2014-9026** **REPORT AND ORDER IMPOSING SANCTIONS** [State Bar No. 11-3805, 13-0301, 13-1205, 13-2214, 13-3323] **FILED AUGUST 28, 2014**

On July 8, 9, 2014, the Hearing Panel ("Panel"), composed of Michael Snitz, a public member, Ralph Wexler, an attorney member, and the Presiding Disciplinary Judge, William J. O'Neil ("PDJ"), held a two day hearing pursuant to Rule 58(j), Ariz. R. Sup. Ct. Craig D. Henley appeared on behalf of the State Bar of Arizona ("State Bar"). Mr. Lassen appeared pro se. Rule 615 of the Arizona Rules of Evidence, the witness exclusion rule, was invoked. The Panel carefully considered the Complaint, Answer, the parties' Joint Prehearing Statement, Individual Pre-Hearing Memorandum, testimony, including that of Mr. Lassen, admitted exhibits, written closing arguments and proposed findings of fact.[1] The Panel now issues the following "Report and Order Imposing Sanctions," pursuant to Rule 58(k), Ariz. R. Sup. Ct.

[1] Consideration was also given to sworn testimony of Robert D. Haws, Esq., Julie Deese, Iris Navarrete, Alma Oliva, James M. Jellison, Esq., Michael Warzynski, Esq., Susan Weber, and Susan Strickler.

Exhibit
2

I. SANCTION IMPOSED: DISBARMENT AND COSTS OF THESE DISCIPLINARY PROCEEDINGS

II. BACKGROUND AND PROCEDURAL HISTORY

An Order of Probable Cause was filed in this matter on December 20, 2013 and March 21, 2014. The State Bar filed its five count Complaint on March 24, 2014, alleging violations of ERs 1.1 (competence), 1.2 (scope of representation), 1.3 (diligence), 1.4(a) (communication). 1.5(a) (fees), 1.16 (terminating representation), 1.7(a)(2) (conflict of interest), 3.1 (meritorious claims and contentions), 3.2 (expediting litigation), 3.3(a)(1) (candor towards the tribunal), 3.4 (fairness to opposing party and counsel), 4.1(a) (truthfulness in statements to others) 5.5 (unauthorized practice of law), 8.1 (knowingly failure to respond for a lawful demand for information by a disciplinary authority), 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation), 8.4(d) (conduct prejudicial to the administrative of justice) and Rule 54(d) (failure to promptly respond to request by the disciplinary authority). Mr. Lassen filed his Answer on April 14, 2014, and an initial case management conference was held on April 30, 2014.

The State Bar asserts disbarment and restitution is the appropriate sanction in this matter for Mr. Lassen's failure to timely file pleadings and file pleadings that complied with rule requirements, misleading his clients about the status of their matters and pursuing statutorily barred claims in addition to other misconduct.

Mr. Lassen asserts he was not given due process because the complaint was not sufficiently clear and specific to inform him of the alleged misconduct and his Motion to Dismiss was not substantially addressed. Mr. Lassen further asserts there is no standard of care evidence or expert testimony that he violated an ethical duty to a

third party to which he had no legal obligation, and no evidence was presented to support a lack of good faith basis in fact or law to raise statutory conflicts. [Respondent's Written Closing Argument.] Mr. Lassen requested a directed verdict.

III. FINDINGS OF FACT

Mr. Lassen was licensed to the practice law in the State of Arizona on April 22, 1978. [Joint Prehearing Statement, p. 1.] He is currently on inactive status in Texas. Mr. Lassen filed an appeal and special action regarding his May 7, 2014, suspension, which is pending. The Supreme Court declined jurisdiction of the Special Action, CV-14-0164-SA. [Hearing Testimony of Mr. Lassen; Supreme Court Order filed July 11, 2014.]

Count One File No. 11-380 (2009 Lawsuit)

The Hackberry Elementary School District (the District), acting through its governing board (Board), hired Bradly Ellico (Ellico) as an administrator/principal for a three (3) year term commencing on July 1, 2008. [Joint Prehearing Statement, p. 3.]

In 2009, Mr. Lassen filed a lawsuit against the District, the Board and various members of the Board, in the Mohave County Superior Court case of *Ellico v. Hackberry*, Case No. 2009-01666 (hereinafter referred to as "2009 Litigation"). The District had an insurance policy issued by the Arizona Risk Retention Trust by which it hired both Robert D. Haws (Haws) and Gust Rosenfeld, P.L.C., (the Firm) as defense counsel. [Joint Prehearing Statement, p. 3.]

Respondent alleged Haws and the Firm had a conflict of interest and motioned for their disqualification. [Joint Prehearing Statement, p.4; State Bar Exhibit 16, 17,

19.] The trial court denied the motion on January 8, 2010.[2] [Joint Prehearing Statement; State Bar Exhibit 17.]

On February 9, 2010, the trial court dismissed a majority of the claims set forth in the Amended Verified Complaint and set an evidentiary hearing on the sole surviving claim, which was for injunctive relief. [State Bar Exhibit 19.] Respondent filed a notice of appeal from the trial court's order on behalf of Mr. Ellico, which appeal became titled *Ellico v. Hackberry*, 1 CA-CV 10-0769. [State Bar Exhibit 3.]

On August 7, 2012, the Arizona Court of Appeals, Division One, issued its memorandum decision (the Decision) in which it affirmed, among other things, the trial court's order denying Mr. Ellico's motion to disqualify counsel. [State Bar Exhibit 4, Bates SBA000257-272.] The Court of Appeals first observed that Ellico would have standing to challenge the defendant's choice of counsel only if Ellico himself had been counsel's past or current client. However, Ellico did not allege he ever had an attorney-client relationship with defense counsel. He did not allege the case presented an "extreme circumstance" that would otherwise enable him to raise such a challenge as contemplated under *Romley* (citation omitted). [State Bar Exhibit 4, Bates SBA000265-269.]

The Court of Appeals noted in a footnote Respondent seemed to argue Ellico was entitled to disqualify counsel based on an improper use of public monies to pay for the representation; however, he did not cite any place in the record showing public monies had been used for such a purpose. [State Bar Exhibit 4, Bates SBA000267, fn 8.]

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[2] The Minute Entry was erroneously dated January 8, 2009.

The Court of Appeals also identified numerous deficiencies in Respondent's briefing including, but not limited to:

i. Respondent failed to develop any argument regarding the defendants' failure to file an answer to the complaint filed in the case. Instead, he "simply reiterate[d] the underlying merits of his case, and he appears to generally object to orders made by the trial court." [Id. at Bates SBA000265, ¶ 13.]

ii. Respondent filed an amended brief that "contains misrepresentations of the record," and "fails in many respects to otherwise comport with the Arizona Rules of Civil Appellate Procedure (ARCAP)." The Court found this to be "especially troubling" because the Court had struck Respondent's original brief for failure to comply with those rules. [Id.]

iii. Respondent requested relief that was "improper in civil appellate practice." For example, he asked the Court to order the removal of certain of the Board members from their positions. [Id.]

The Court of Appeals granted the Appellees their costs and reasonable fees as provided for in ARCAP 21, stating as follows:

> The record reveals that Ellico commenced and continued this litigation primarily for delay and harassment, and he unreasonably expanded the proceedings by seeking to disqualify opposing counsel. Further, his brief unreasonably failed to comply with ARCAP 13(a). Even after his opening brief was struck for failure to comply with ARCAP, his subsequent brief did not comply with ARCAP.

[Id. at Bates SBA000271-72, fn 10.]

The attorney's fees and cost award was allocated equally among Mr. Lassen and his client. [Id., Bates SBA000271-2, ¶ 23.] The cost award is outstanding. [Hearing Testimony of Mr. Lassen.]

2011 Lawsuit and Appeal

On July 15, 2011, Respondent filed for Ellico a lawsuit against the District, the Board, various members of the Board, and/or counsel for the named defendants,

specifically, Robert D. Haws (Haws) and Gust Rosenfeld, P.L.C. (the Firm) in the Mohave Superior Court case of *Ellico v. Hackberry*, Case No. 2011-01182 (hereinafter referred to as "2011 Litigation"). [Joint Prehearing Statement, p. 3, Exhibit 1, Bates SBA000004-16.] On October 3, 2011, Respondent filed an Amended Verified Complaint in the 2011 Litigation in which he added additional claims for damages. [Joint Prehearing Statement p. 3; State Bar Exhibit 1, Bates SBA000044-56.]

Respondent did not serve Haws or the Firm with the Complaint. [Joint Prehearing Statement, p. 3; Hearing Testimony of Gary Lassen; Testimony of Robert Haws.] After answering the Amended Complaint, the opposing parties filed motions for judgment on the pleadings. [Joint Prehearing Statement, p. 3; Hearing Testimony of Robert Haws.]

In response, Respondent filed a motion for judgment on the pleadings, motion for summary judgment, and motion to disqualify the Board's attorneys' attorneys based upon allegations of a conflict of interest. The trial court denied the disqualification motion and dismissed Ellico's claims with prejudice. The Court further awarded Danny King his attorney's fees and costs in the amount of $13,897.50, and the remaining defendants in the Mohave County Superior Court case of *Ellico v. Hackberry School District, et. al.*, CV2011-01182, their attorney fees and costs in the amount of $23,116.00. Respondent filed a notice of appeal from the trial court's order on behalf of Mr. Ellico, which became titled *Ellico v. Hackberry*, 1 CA-CV 13-0025. [Joint Prehearing Statement, p. 4; State Bar Exhibit 12.]

On February 4, 2014, the Arizona Court of Appeals, Division One, issued its memorandum decision (the Decision) in which it affirmed, among other things, the trial court's order denying Mr. Ellico's motion to disqualify counsel and the trial court's

determination that Ellico's claims were barred for the failure to comply with the Notice of Claim statutes governing Ellico's claims. The Court of Appeals further found "Ellico's continued pursuit of waived claims lacks substantial justification and has unreasonably expanded this litigation." [Joint Prehearing Statement, p. 4; State Bar Exhibit 11, Bates SBA000283 ¶ 8, fn 1, and Bates SBA000286 ¶ 13 – SBA000288 ¶ 18.]

The Court of Appeals awarded the opposing parties attorney's fees and costs pursuant to Arizona Revised Statute § 12-349(B) and allocated the award equally between Ellico and Respondent. [Joint Prehearing Statement, p.5; State Bar Exhibit 11, Bates SBA000288 ¶ 18.]

The Hearing Panel finds Mr. Lassen intentionally pursued statutorily barred claims, failed to comply with Notice of Claims statutes, filed a complaint and amended complaint that had no basis in fact or law and named defendant's counsel in order to disqualify them and for the purpose of expanding the litigation. The Panel further finds Mr. Lassen intentionally and knowingly did not serve Haws or the Firm. The Panel also finds Mr. Lassen intentionally failed to cure the deficiencies of his opening brief before the Court of Appeals, Division One, failed to comply with the requirements of the Arizona Rules of Civil Appellate Procedure (ARCAP), and knowingly pursued relief that had no basis in law.

Count Two File No. 13-0301

As part of Respondent's representation of Complainant, Respondent required a $7,500.00 non-refundable retainer. By letter dated January 21, 2008, Respondent explained that the non-refundable deposit or fee is for "the filing cost and service of process fee attendant to initiating a lawsuit against Wells Fargo and named individuals." [State Bar Exhibit 21, Bates SBA000378.] The letter further explained

that "[s]ubsequent fees and costs particularly those of expert witnesses are the client's responsibility and should be paid as they are incurred." [Id.]

Respondent filed the United States Federal Court lawsuit of *Deese v. Wells Fargo Bank, et.al.*, CV-08-00539. In or around July 10, 2009, Respondent provided Complainant with billing records detailing the legal services purportedly performed in January and February 2008 along with the fees and costs associated with those services. The total bill was $7,500.00, leaving a balance of zero. [Joint Prehearing Statement, p. 5.]

Over the course of the representation, Respondent provided Complainant with billing records detailing the purported costs incurred during the representation and Complainant paid Respondent no less than $32,000.00 for purported costs and expenses. [Joint Prehearing Statement, p. 6; State Bar Exhibit 21, Bates SBA000382-392; Hearing Testimony of Julie Deese.]

On or before June 1, 2010, Complainant requested a full accounting of all money paid to Respondent. Respondent's legal assistant, Stephanie Somplack, provided Complainant with billing records by e-mail and indicated that she intended to perform a thorough audit of the billing records. [Joint Prehearing Statement, p. 6; State Bar Exhibit 21, Bates SBA000397.]

The billing records contained a number of repeated, omitted or disputed costs including, but not limited to, a double billing for a mediation to Scott and Skelly in the amount of $1,867.50, legal fees of $147.50 incurred for reviewing the transcript of a deposition, fees and costs of $2,649.95 associated with expert John V. Scialli, a $1,050.00 "prepayment" associated with a purported deposition of Dr. Nelson-Spiers, a $203.00 payment for a purported video deposition of Travis Clements and a

$1,000.00 payment to a Barry W. Linden, which was evidenced by a check drawn on the law firm's operating bank account but does not appear on any of the accountings provided to Complainant. [State Bar Exhibit 21, Bates SBA000393, 395-396, 398-401.]

On or about October 13, 2010, Respondent filed an appeal with the Ninth Circuit of the United States Court of Appeal after receiving an unfavorable ruling on a motion for summary judgment in the trial court. In March 2012, Respondent entered into an Agreement for Discipline by Consent requiring Respondent to serve a 30-day suspension effective April 28, 2012, for violations of ERs 1.3, 1.4(a)(2)-(4), 1.4(b), 2.1, 8.1, 8.4(c). [Joint Prehearing Statement, p.6; State Bar Exhibit 81, 82, 83.]

On April 24, 2012, Susan Weber, an attorney and friend of Complainant's, documented a conversation between Complainant and Respondent wherein Complainant informed Respondent that she googled herself and discovered the Ninth Circuit's affirmation of the lower court's unfavorable ruling. The Weber e-mail continues by documenting Respondent's response which was that although Respondent received the ruling "a few weeks ago" Respondent did not inform Complainant because he had been very busy.

The Weber e-mail closes with a demand for an accurate accounting of all client funds related to the representation along with the supporting invoices and proofs of payment including, but not limited to:

a. Any and all court reporting services;

b. Any and all doctor's reports;

c. Any and all airline tickets and hotel bills for travel;

d. Any and all telephone bills;

e. Any and all photocopying; and

f. Any other miscellaneous expenses such as postage.

[State Bar Exhibit 21, Bates SBA000407.]

Later that day, Respondent responded and indicated he would begin assembling the information. Respondent further claimed "(he has) been attempting to explore other avenues for further action and wanted a detailed plan of action to lay out for consideration." Still later that day, when asked for further information regarding the "options," Respondent stated, "I will respond in detail regarding all options that I have looked into including going to the U.S. Supreme Court and pursuing a separate case against (Complainant's) former supervisor." When asked when they should expect a response, Respondent stated "no later than next week." [State Bar Exhibit 21, Bates SBA000405-7; Hearing Testimony of Susan Weber; Hearing Testimony of Julie Deese.]

In an e-mail dated May 3, 2012, Complainant asked Respondent a number of questions including: "[W]hat have you done on the case since Dec 2011?" to which Respondent replied "...i [sic] am working on the list of options including a separate case against Reede Reynolds. My anger against the Court allowing Wells to escape by doing nothing maked [sic] my blood pressure swell and has caused me to have random anger outbursts." [State Bar Exhibit 21, Bates SBA000408.] On May 4, 2012, Weber e-mailed Respondent and again requested the accounting to no avail. [Id. at bates SBA000409-410.] On May 5, 2012, Complainant e-mailed Respondent acknowledging his stress but again requested information. Later that day, Respondent simply stated "thank you for your concern; I am working on putting the report for you together." [Id. at Bates SBA000410.]

On May 7, 2012, Weber e-mailed Respondent memorializing that Respondent failed to provide the accounting and requested additional information regarding the status of his efforts. Later that day, Respondent again responded that he was "working on a comprehensive report for you both top [sic] be completed this week." [State Bar Exhibit 21, Bates SBA000411-413.] Complainant responded later that day asking "[Y]ou are causing me to have an anxiety attack, I am asking just one more time to answer the freakin question??? What is your problem???" [Id. at Bates SBA000412.] After a back and forth between Weber, Complainant and Respondent, Respondent stated, "I will respond with a detailed narrative by week's end, and then I propose we all three have a lengthy conference call to discuss all matters." [Id. at Bates SBA000411.]

After being informed that Complainant was scheduled to have major surgery on May 29, Respondent stated the following in a response e-mail dated May 9, 2012, "[M]y prayers are with you. I will be working most of Friday and Saturday, if necessary, to get you everything we have discussed. I will include a short to the point summary and detail of the legal issues as well. This case and the injustice that has occurred to date is appalling." [Id. at Bates SBA000411-414]. On May 12, 2012, Respondent e-mailed Complainant and stated the following:

> I have been doing legal research yesterday and am excited about pushing toward a jury trial moving in state court to get away from the bitch judge and get to a trial SOONER. I am anxious to get this going in court in HJune [sic]. I will still send you the full analysis of the federal discrimination analysis and the advice I [sic] received regarding getting to the Supreme court including pros and cons. Immediacy is what you need and deserve. More to come soon.

[Id. at Bates SBA000415-416.]

When asked about details regarding the pursuit of the lawsuit on May 15, 2012, Respondent stated, in part, "I will send update with specific strategy options as discussed in early June." [State Bar Exhibit 21, Bates SBA000411-414.]

On June 25, 2012, Respondent was reinstated to the practice of law. [State Bar Exhibit 83.] On July 14, 2012, Complainant terminated Respondent. Later that day, Respondent responded, "I am working on your request, and Ii [sic] was already working on the issues and options we discussed in April and May." On December 3, 2012, Weber again requested a full accounting for the legal services and costs be provided along with any supporting documentation. On December 31, 2012, Weber again requested a full accounting for the legal services and costs in an e-mail entitled: "Still no response from you." Later that day, Respondent responded claiming that he was out with the flu but that he was working on it and will respond "as soon as I can, and in any event, before the 15th." [State Bar Exhibit 21, Bates SBA000417-419.]

In his initial response to the State Bar, dated May 6, 2013, Respondent states that "this was a case in which the costs far exceeded the amount paid by the client" but failed to provide any accounting, explanation or supporting documentation regarding the purported costs incurred during the representation. Respondent also admitted the "forensic accountant was not fully paid" and indicated that he intended to provide the State Bar with an "amended, supplemental response." [State Bar Exhibit 26, Bates SBA000429-30.]

On August 19, 2013, the State Bar requested additional information from Respondent including, but not limited to:

i. A copy of the representation letter for (Complainant);

ii. Copies of all invoices/billing statement/time records relating to the representation of (Complainant);

iii. Copies of all bank statements/client ledgers for your Trust account and relating to the representation of (Complainant) and evidencing all payments made by (Complainant) to you, all payments made by you on her behalf, and the balance, if any, of funds that you currently hold relating to the representation;

iv. Correspondence between you and (Complainant) relating to the representation";

v. The 'amended, supplemental response' that you reference in your May 6 letter, which I have not received;

vi. Answers to the following questions:

vii. When did you advise the client that you were suspended?

viii. How did you advise the client of the suspension?

ix. Provide any supporting documentation regarding the manner in which you related this information.

[State Bar Exhibit 29.]

On September 3, 2013, Respondent responded by providing a copy of the engagement letter and representation agreement and further explained that he anticipated being interviewed and thought that the production of documents could take place as part of the interviewing process. In his letter dated September 3, 2013, Respondent finally stated, "I had assembled information regarding cost expensing and will retrieve that effort and forward it under separate cover letter." [State Bar Exhibit 30.]

In an e-mail to the State Bar dated September 26, 2013, Respondent again indicated that he would send the requested information no later than September 30, 2013. [State Bar Exhibit 31.]

The Hearing Panel finds Mr. Lassen intentionally failed to follow his client's instructions during representation and failed to communicate reasonably with his clients. The Panel finds Mr. Lassen knowingly charged his clients an unreasonable fee and intentionally failed to take steps to protect his clients' interests after termination of the representation. The Panel further finds Mr. Lassen intentionally engaged in the practice of law while suspended and that his conduct involved dishonesty, fraud and deceit.

Count Three (File No. 13-1205)

In June 2009, Respondent filed an employment discrimination and wrongful termination lawsuit against Wells Fargo Bank on behalf of Complainants. [Joint Prehearing Statement, p. 7.] Wells Fargo filed a Motion to Dismiss and Respondent did not respond. After the motion was granted as to one of the claims, Wells Fargo filed an answer to the remaining count and requested attorney's fees and costs. [Answer at ¶ 22.]

The remaining claim was dismissed without prejudice from the inactive calendar for lack of prosecution. In June 2010, Wells Fargo filed a Motion for an award of attorney's fees and costs against Complainants and Respondent. [Joint Prehearing Statement, p. 7.] Respondent did not file a response and in late July, Wells Fargo was awarded attorney's fees and costs in the amount of $44,934.80 against Complainants and Respondent, jointly and severally. [State Bar Exhibit 38, Bates SBA000455.]

Respondent requested a new trial which was denied on November 9, 2010. [Joint Prehearing Statement, p. 7.] On January 28, 2011, the court issued an order denying the new trial and reaffirming the judgment of $44,934.80 against Complainants and Respondent, jointly and severally. [Joint Prehearing Statement, p.7; State Bar Exhibit 54.]

On February 25, 2011, Respondent filed a Notice of Appeal and Division One of the Court of Appeals affirmed the trial court's rulings in all respects including, but not limited to, the judgment of $44,934.80 against Respondent and his clients, jointly and severally. [Joint Prehearing Statement, p. 7; State Bar Exhibit 38, Bates SBA000460-62 ¶ 12-15, Bates SBA000465-6 ¶ 17-19.]

On June 14, 2012, Respondent filed a Notice of Bankruptcy in the lower court. [Joint Prehearing Statement, p. 7.]

The Hearing Panel finds Mr. Lassen intentionally failed to follow his client's instructions during representation and failed to communicate reasonably with his clients. The Panel finds Mr. Lassen had a concurrent conflict of interest. The Panel further finds Mr. Lassen knowingly failed to timely file responsive and other pleadings and intentionally failed to act diligently during his representation of his clients.

Count Four File No. 13-2214

On April 9, 2012, Respondent filed a complaint on behalf of his client, Andrew Goode, in the Pinal County Superior Court lawsuit of *Goode v. Keys, et.al.*, CV 2012-00959 (hereinafter referred to as "Lawsuit"). At all times pertinent, Respondent was the sole attorney of record in the lawsuit. [Joint Prehearing Statement, p. 8.]

As the claim was accepted by the Arizona Counties Insurance Pool (ACIP), Respondent and his client had certain statutory obligations pursuant to Arizona

Revised Statute § 23-1023. [Ariz. Rev. Stat. § 23-1023(d); Hearing Testimony of Michael Warzynski.]

On or about April 12, 2012, James Jellison (hereinafter referred to as "Jellison") notified Respondent he represented the Pinal County Sheriff's Department. [Joint Prehearing Statement, p. 8; Hearing Testimony of James Jellison.]

Effective April 28, 2012, Respondent was suspended for 30 days by consent in SB File No. 10-1508 for violations of 1.3, 1.4(a)(2)-(4), 1.4(b), 2.1, 8.1, 8.4(c). On June 25, 2012, Respondent was reinstated to the practice of law. [Joint Prehearing Statement, p. 9; State Bar Exhibit 81-83.]

On or about August 24, 2012, the Court issued a Notice which set the matter for a Dismissal Hearing Without Prejudice on September 25, 2012, due to Respondent's failure to serve the Defendants. On September 24, 2012, Respondent contemporaneously filed a Notice of Change of Judge and Motion to Extend Time For Service. On September 25, 2012, neither Respondent nor his client appeared at the Dismissal Hearing. [Joint Prehearing Statement, p. 9; State Bar Exhibit 56, Bates SBA000545, 548-550, 556.]

On September 25, 2012, Jellison entered a special limited appearance and filed affidavits of the individually named Pinal County employees attesting to their availability for service at their publically disclosed business addresses. Based upon the Notice of Change of Judge, the Court referred the case to the Presiding Judge and the matter was reassigned. On October 3, 2012, the Court denied Respondent's Motion to Extend Time for Service and later rescheduled the Dismissal Hearing for November 19, 2012. On October 15, 2012, Jellison filed a Motion to Dismiss Pinal County and certain individually named Defendants collectively referred to as the "Pinal

County Defendants." [Joint Prehearing Statement, p. 9; State Bar Exhibit 56, Bates SBA000580, Bates SBA000583-593.]

On November 8, 2012, Respondent filed an untimely Response to the Pinal County Defendants' Motion to Dismiss. While Respondent explained that Plaintiffs filed supplemental Notices of Claim and intended to file an Amended Complaint, the untimely response did not provide any "good cause" as to why Respondent did not use any efforts to serve the Pinal County Defendants during the 120 day statutory period set forth in Rule 4, Ariz. R. Civ. P. [State Bar Exhibit 56, Bates SBA000595-98.]

On November 16, 2012, Respondent filed a First Amended Complaint. Joint Prehearing Statement, p. 10; Bates SBA000609-52.] On November 19, 2012, the Court held the Dismissal Hearing wherein Respondent admitted that he did not serve the Pinal County Defendants during the statutory period but that by filing an Amended Complaint, the 120 day statutory period is extended or abated. [Bates SBA000654-674.]

Following oral argument, the Court rejected Respondent's argument and prepared a minute entry dismissing the matter as to the Pinal County Defendants. [Bates SBA000676-677, 696]

On December 13, 2012, the Court filed an order stating "that Defendants Pinal County, Pinal County Sheriff's Office, Paul Babeu, Steve Henry, Blake King, Michael Hughley, Brandi Clark and Paul Ahler are dismissed from this action, without prejudice." [Joint Prehearing Statement, p. 10; Bates SBA000698-700.]

On February 28, 2013, Respondent filed misdated Applications for Entry of Default against four of the Pinal County Defendants. In support of his applications,

Respondent claimed that the Pinal County Defendants were served and failed to answer the First Amended Complaint. [Joint Prehearing Statement, p. 10; Bates SBA000702-713.]

On June 13, 2013, Respondent filed properly dated Notices of Application for Default, Applications for Entry of Default and sworn "Affidavits On Default" against the same four Pinal County Defendants. The Affidavit pleadings were filed under penalty of perjury and fail to reference the prior dismissal documents, the dismissal hearing or the dismissal order and inaccurately stated that the respective Defendants "failed to plead or otherwise defend." The Notice pleadings also failed to reference the prior dismissal documents, the dismissal hearing or the dismissal order and inaccurately stated that the respective Defendants "failed to plead or otherwise defend." [Joint Prehearing Statement, p. 10; State Bar Exhibit 56, Bates SBA000715-747.]

The June 2013 pleadings did result in the entry of default against Pinal County, Michael Hughley and Brandi Clark. [Id. at Bates SBA000749-754.] On June 14, 2013, Respondent filed a Rule 41 Notice of Dismissal with Prejudice against the private entity. [Joint Prehearing Statement, p. 10; State Bar Exhibit 56, Bates SBA000756-760.]

On June 28, 2013, Jellison mailed Respondent a letter acknowledging receipt of the June 14, Rule 41 Notice of Dismissal. [Joint Prehearing Statement, p. 10; State bar Exhibit 56, Bates SBA000762.]

On July 11, 2013, Respondent filed Notices of Application for Default, Applications for Entry of Default and sworn "Affidavits On Default" against two Pinal County Defendants. [Joint Prehearing Statement, p. 11; State Bar Exhibit 56, Bates SBA000764-780.]

The Affidavit pleadings were filed under penalty of perjury and fail to reference the prior dismissal documents, the dismissal hearing or the dismissal order and inaccurately stated that the respective Defendants "failed to plead or otherwise defend". The Notice pleadings also failed to reference the prior dismissal documents, the dismissal hearing or the dismissal order and inaccurately stated that the respective Defendants "failed to plead or otherwise defend." [Joint Prehearing Statement, p. 10; State Bar Exhibit 56, Bates SBA000764-780.]

The July 2013 pleadings did result in the entry of default against the two Pinal County Defendants. [Id. at Bates SBA000782-785.] On July 18, 2013, Jellison wrote Respondent demanding the production of any default pleading or documents as he was unaware of any of Respondent's prior efforts to obtain a default judgment. Jellison further demanded that Respondent file the appropriate paperwork and take all efforts to undo any attempts to obtain a default judgment against any of the Pinal County Defendants. [Id. at Bates SBA000787.]

On July 31, 2013, Respondent wrote Jellison and stated, in part, the following:

> There appears to be some confusion on your part as to the status of the Pinal Defendants. After the court dismissed the original Complaint without prejudice, a new Complaint was filed and timely served on multiple Pinal County Defendants on different dates. To date, no named county defendant has filed an Answer. Other defendants in this matter have also been served, and one settlement has been reached.
>
> It was my intent to get the attention of the Pinal County defendants by initiating the default process. It appears and is confirmed by your letter that there is some confusion among the County Defendants as to their status. Please identify who you represent and I will provide you the service information immediately.

[Joint Prehearing Statement, p. 11; Id. at Bates SBA000789.]

On August 6, 2013, Jellison replied stating, in pertinent part,

> "I...assure you there is now no confusion on my part about what you have done.... Your pursuit of default judgments in a case where my clients made a limited appearance and, through that appearance, obtained a dismissal is beyond my comprehension. Your failure to send me copies of your Affidavits and Applications when you know I have made a limited appearance in the matter on behalf of these already dismissed Pinal County Defendants is also beyond my comprehension. Your July 31, 2013 letter provides no cogent explanation or justification for your behavior in this regard."

[Id. at Bates SBA000791-794.]

The Hearing Panel finds Mr. Lassen intentionally failed to follow his client's instructions during representation and knowingly failed to act diligently during the representation. The Panel further finds Mr. Lassen intentionally pursued non-meritorious claims and default judgments and that he knowingly made false statements of fact or law regarding his pursuit of those non-meritorious claims and default judgments. The Panel finds Mr. Lassen's actions in filing inaccurate and false pleadings and disobeying obligations under rules of the court were knowing. Mr. Lassen's conduct and actions prejudiced the administration of justice.

Count Five File No. 13-3323

On February 12, 2013, ACIP retained Complainant to address the lien issues and Respondent's violation of Section 23-1023, Ariz. Rev. Stat. [Hearing Testimony of Michael Warzynski; Hearing Testimony of Susan Strickler.] On April 8, 2013, Complainant filed a Motion to Intervene. On April 18, 2013, Respondent confirmed to Complainant that he settled a portion of the claim without notice to or authorization by ACIP. [Joint Prehearing Statement, p. 12; Exhibit 69, Bates SBA000922-923, 925.]

On May 14, 2013, Complainant met with Respondent and again confirmed that Respondent settled the claims with one of the parties for $23,500.00 without notice to or authorization by ACIP. Between June and October 2013, Complainant and

Respondent have written correspondence regarding Respondent's unauthorized settlement and subsequent unaccounted for distribution(s) of the settlement proceeds. [Hearing Testimony of Michael Warzynski; Hearing Testimony of Susan Strickler; State Bar Exhibit 69, Bates SBA000927-941.]

To date, the State Bar has not received a response from Respondent or any of his prior attorneys to the screening letters in this case. [State Bar Exhibits 70, 71, 72, 73, 74.]

The Hearing Panel finds Mr. Lassen intentionally filed non-meritorious claims and defaults. The Panel finds Mr. Lassen's failure to comply with statutory requirements, was knowing if not intentional as was his failure to expedite litigation. The Panel finds Mr. Lassen intentionally practiced law during his suspension. Moreover the Panel finds that Mr. Lassen intentionally failed to respond to inquiries and demands for information by the State Bar related to their disciplinary investigation. Mr. Lassen's conduct prejudiced the administration of justice.

IV. CONCLUSIONS OF LAW AND DISCUSSION OF DECISION

The Panel finds clear and convincing evidence Mr. Lassen violated Rule 42, ERs 1.1 (competence), 1.2 (scope of representation), 1.3 (diligence), 1.4(a) (communication). 1.5(a) (fees), 1.16 (terminating representation), 1.7(a)(2) (conflict of interest), 3.1 (meritorious claims and contentions), 3.2 (expediting litigation), 3.3(a)(1) (candor towards the tribunal), 3.4 (fairness to opposing party and counsel), 4.1(a) (truthfulness in statements to others), 5.5 (unauthorized practice of law), 8.1 (knowingly failure to respond for a lawful demand for information by a disciplinary authority), 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation),

8.4(d) (conduct prejudicial to the administrative of justice) and Rule 54(d) (failure to promptly respond to request by the disciplinary authority).

Count One

Mr. Lassen violated ER 1.1 when his appellate brief filed in the 2009 Litigation unreasonably failed to comply with ARCAP 13(a). The Court of Appeals gave Mr. Lassen an opportunity to correct the deficiencies, but his opening brief was ultimately struck. Mr. Lassen further pursued statutorily barred claims and failed to comply with Notice of Claim statutes.

Mr. Lassen violated ER 3.1 when in the 2009 Litigation he filed a complaint and amended complaint which had no basis in fact or law. The complaints were dismissed and his subsequent briefs failed to comply with ARCAP 13(a). An award of costs and fees were assessed against Respondent and his client. Mr. Lassen further named defendant's counsel as defendants in the 2011 Litigation without any basis in fact or law. Mr. Lassen also expanded the litigation when he pursued claims that were statutorily barred.

Mr. Lassen violated ERs 3.3(a)(1), 4.1(a) and 8.4(c), by filing an amended brief that did not comply with requirements of ARCAP and misrepresented the record within the brief.

Mr. Lassen violated ER 8.4(d) by filing a complaint and an amended complaint that had no basis in fact or law. Mr. Lassen also filed two appellate briefs that failed to comply with ARCAP rule requirements, resulting in an award of costs and fees because of those deficiencies. Mr. Lassen further named defendants in a litigation in an effort to disqualify them as counsel, without any basis in fact or law, thereby unreasonably expanding the litigation.

Count Two

Mr. Lassen violated ER 1.2 by repeatedly failing to abide by the client's instructions during the representation.

Mr. Lassen violated ER 1.4(a) when he failed to reasonably communicate with the client during the representation.

Mr. Lassen violated ER 1.5(a) by charging his clients an unreasonable fee for the representation.

Mr. Lassen violated ER 1.16 by failing to take the steps reasonably necessary to protect the client after the termination of the representation.

Mr. Lassen violated ER 5.5 by engaging in the practice of law while suspended.

Mr. Lassen violated ER 8.4(c) by engaging in conduct involving dishonesty, fraud, deceit or misrepresentations.

Count Three

Mr. Lassen violated ER 1.1 by failing to exhibit the knowledge or preparation necessary for the representation.

Mr. Lassen violated ER 1.2 by failing to abide by the client's instructions throughout the representation.

Mr. Lassen violated ER 1.3 by failing to act diligently during the course of representation.

Mr. Lassen violated ER 1.4 by failing to reasonably communicate with the client during the representation.

Mr. Lassen violated ER 1.7(a)(2) by having a concurrent conflict of interest during the representation.

Mr. Lassen violated ER 3.1 by failing to timely file responsive and other pleadings resulting in sanctions being imposed against Respondent and his client.

Mr. Lassen violated ER 3.2 by failing to timely file responsive and other pleadings resulting in sanctions being imposed against himself and his client.

Mr. Lassen violated ER 8.4(d) by failing to timely file responsive and other pleadings resulting in sanctions being imposed against himself and his client.

Count Four

Mr. Lassen violated ER 1.2 by failing to abide by the client's instructions during the representation.

Mr. Lassen violated ER 1.3 by failing to act diligently during the representation.

Mr. Lassen violated ER 3.1 by pursuing non-meritorious claims and default judgments.

Mr. Lassen violated ER 3.3 when he knowingly made a false statement of fact or law to the tribunal regarding Respondent's pursuit of non-meritorious claims and default judgments.

Mr. Lassen violated ER 3.4 by filing inaccurate and false pleadings and knowingly disobeyed an obligation under the rules of a tribunal.

Mr. Lassen violated ER 8.4(d) by repeatedly engaged in conduct prejudicial to the administration of justice.

Count Five

Mr. Lassen violated ER 1.1 by failing to provide competent representation to his client as he failed to comply with the statutory requirements in a Workman's Compensation Claim involving an Insurance Pool such as ACIP.

Mr. Lassen violated ER 1.3 by consistently failed to act diligently throughout the lawsuit and his representation of his clients.

Mr. Lassen violated ER 3.1 by filing meritless claims and unauthorized defaults on behalf of his clients.

Mr. Lassen violated ER 3.2 by failing to make reasonable efforts to expedite litigation consistent with the interests of his clients.

Mr. Lassen violated ER 5.5 by engaging in the practice of law as defined by Rule 31, Ariz. R. Sup. Ct., during his suspension.

Mr. Lassen violated ER 8.1 by knowingly failing to respond to a lawful demand for information by the disciplinary authority.

Mr. Lassen violated ER 8.4(d) by engaging in conduct that was prejudicial to the administration of justice.

Mr. Lassen violated Rule 54(d)(2) by failing to promptly respond to a request by the disciplinary authority for information relevant to pending charges, complaints or matters under investigation.

Discussion

Having considered the testimony and exhibits in this matter, we find most troubling Mr. Lassen's repeated intentional misconduct. This is typified by his intentionally naming Mr. Haws and his firm as defendants in order to disqualify them from representing their client of over two years and then never serving them.

This misconduct caused actual and significant injury to the client as the client was forced to secure new counsel consisting of two separate law firms, incur additional costs, case efficiently suffered and his relationship with the Board was affected. [Hearing Testimony of Mr. Haws.]

Mr. Lassen argues the naming of Haws and the Firm in the 2001 Litigation was necessary as Mr. Haws participated in an illegal meeting that violated the Open Meeting Law in violation of Section 38-43-107(B), Ariz. Rev. Stat. However, there was no evidence to support his argument.

This is further typified by Mr. Lassen's intentional false billing for fees and costs in Count Two, followed by his refusing to notify his client of the Ninth Circuit's affirmation of the lower court's unfavorable ruling. We find these to be far worse than mere negligent actions. He intentionally misled his client with untruths and omissions of information. His deceitful promises were multiple and intentional.

In Count Three, we conclude even his inaction was worse than negligent or accidental. He continued a pattern of intentionally misleading his clients to their harm and with selfish motive. Similarly in Court Four, his misconduct was planned, intentional and deceitful. In Count Five, he intentionally refused to follow the law and intentionally acted outside that law in reaching an unauthorized settlement and distribution of the settlement proceeds.

Additionally troubling, is Mr. Lassen's intentional refusal to notify his clients of his suspension and his intentional unauthorized practice of law while suspended. Mr. Lassen admits he did not associate counsel during his period of suspension and maintains his current suspension did not preclude him from practicing law in Ninth Circuit Court of Appeals. We disagree. Mr. Lassen cannot practice law in any jurisdiction, state or federal, if the matter on appeal arose from facts or law occurring in a matter originating in Arizona. In his prior discipline matter involving a suspension, Mr. Lassen was found to have engaged in the unauthorized practice of law while suspended, similar misconduct to the instant matter.

VI. SANCTIONS

In attorney discipline matters, the Hearing Panel reviews the American Bar Association's *Standards for Imposing Lawyer Sanctions* ("*Standards*") in weighing what sanction to impose. Rule 58(k), Ariz. R. Sup. Ct. The appropriate sanction, however, turns on the unique facts and circumstances of each case. *In re Wolfram*, 174 Ariz. 49, 59, 847 P.2d 94, 104 (1993).

Analysis under the ABA *Standards*

The Hearing Panel considers the duty violated, the lawyer's mental state, the actual or potential injury caused by the misconduct, and the existence of aggravating and mitigating factors. *In re Peasley*, 208 Ariz. 27, 33, 35, 90 P.3d 764, 770 (2004). *See also Standard* 3.0. Because this matter involves multiple counts with multiple violations, the Panel determined that a detailed discussion of the *Standards* on a count-by-count basis is not necessary because numerous *Standards* are applicable and a violation-by-violation analysis would be unnecessary. *In re Woltman*, 181 Ariz. 525, 892 P.2d 861 (1995). The ultimate sanction imposed should at least be consistent with the sanction for the most serious instance of misconduct. *In re Redeker*, 177 Ariz. 305, 868 P.2d 318 (1994), citing 1991 ABA *Standards*, Theoretical Framework, p.6.

Standard 4.4 Lack of Diligence is applicable to Mr. Lassen's violations of ERs 1.2, 1.3 and 1.4. *Standard* 4.41 provides:

> Disbarment is generally appropriate when:
> (a) a lawyer abandons the practice and causes serious or potentially serious injury to a client: or
> (b) a lawyer knowingly fails to perform services for a client and causes serious or potentially serious injury to a client; or
> (c) lawyer engages in a pattern of neglect with respect to client matters and causes serious or potentially serious injury to a client.

In Count Two, Mr. Lassen failed to adequately communicate with and diligently represent his client. He further failed to abide by the clients decisions during the course of representation when he failed to actively litigate the matter and also failed to provide accurate and updated information to his client on the services he did provide. In Count Three, Mr. Lassen failed to abide by the client's direction regarding representation, failed to adequately communicate and provide adequate representation, and failed to file responsive pleadings to protect the client's rights. In Count Four, Mr. Lassen failed to abide by the client's instructions and failed to appear at hearing. He further filed pleadings containing inaccurate and false statements and non-meritorious claims and disobeyed his obligation under the rules of a tribunal. In Count Five, Mr. Lassen failed to diligently represent his clients during the course of representation.

Standard 4.6, Lack of Candor is applicable to Mr. Lassen's violation of ER 8.4(c). *Standard* 4.61 provides:

> Disbarment is generally appropriate when a lawyer knowingly deceives a client with the intent to benefit the lawyer or another, and causes serious or potentially serious injury to a client.

In Count One, Mr. Lassen filed an amended brief that misrepresented the record and failed to comply with the rule requirements. In Count Two, Mr. Lassen misled his client to believe there were other courses of action available after dismissal of her case and failed to advise the client he was suspended.

Standard 6.1, *Violation of Duties Owed the Legal System* is applicable to Mr. Lassen's violations of ERs 3.3(a), 4.1(a), 8.1 and Rule 54(d). *Standard* 6.11 provides:

> Disbarment is generally appropriate when a lawyer, with the intent to deceive the court, makes a false statement,

> submits a false document, or improperly withholds material information, and causes serious or potentially serious injury to a party, or causes serious or potentially serious adverse effect on the legal proceeding.

In Count One, Mr. Lassen filed an amended brief with the Arizona Court of Appeals that misrepresented the record and failed to comply with rule requirements of Arizona Rules of Civil Appellate Procedure (ARCAP). In Count Four, Mr. Lassen knowingly made a false statement of fact and law to the court by filing non-meritorious claims and default judgments. In Count Five, Mr. Lassen failed to promptly respond to the State Bar's investigation and request for information.

Standard 6.2 *Abuse of the Legal Process* is applicable to Mr. Lassen's violation of ERs 3.1, 3.2, 3.4 and 8.4(d). *Standard* 6.21 provides:

> Disbarment is generally appropriate when a lawyer knowingly violates a court order or rule with the intent to obtain a benefit for the lawyer or another, and causes serious injury or potentially serious injury to a party, or causes serious or potentially serious interference with a legal proceeding.

In Count One, Mr. Lassen filed complaints that had no basis in fact or law and his appellate briefs did not comply with ARCAP which resulted in costs and fees being imposed against Mr. Lassen and his client. Mr. Lassen intentionally named defendants' counsel Haws and the Firm as defendants in the 2011 litigation in an effort to disqualify them as counsel when there was no basis in fact or law to disqualify counsel. Mr. Lassen further pursued claims barred statutorily and unreasonably expanded the litigation.

Standard 7.1 *Violations of Other Duties owed as a Professional* is applicable to Mr. Lassen's violation of ER 5.5 and provides:

> Disbarment is generally appropriate when a layer knowingly engages in conduct that is a violation of a duty owed as a professional with the intent to obtain a benefit for the lawyer or another, and causes serious or potentially serious injury to a client, the public, or the legal system.

In Count Five, Mr. Lassen engaged in the unauthorized practice of law while suspended.

Standard 8.1 Prior Discipline Orders provides:

> Disbarment is generally appropriate when a lawyer:
> (a) intentionally or knowingly violates the terms of a prior disciplinary order and such violation causes injury or potential injury to a client, the public, the legal system, or the profession; or
> (b) has been suspended for the same or similar misconduct, and intentionally or knowingly engages in further similar acts of misconduct that cause injury or potential injury to a client, the public, the legal system, or the profession.

The *Commentary* states:

> Disbarment is warranted when a lawyer who has been previously disciplined intentionally or knowingly violates the terms of that order, and as a result, causes injury or potential injury to a client, the public the legal system. The most common case is one where a lawyer has been suspended but nevertheless, practices law. The courts are generally in agreement in imposing disbarment in such cases.

AGGRAVATION AND MITIGATION

The Hearing Panel determined that the following aggravating factors are supported by the record:

Standard 9.22(a) prior disciplinary offenses. Mr. Lassen's prior disciplinary offenses are as follows:

In File No. PDJ-2013-9068, Mr. Lassen was suspended for two years effective May 7, 2014,[3] for violating Rule 42, Arizona Rules of Supreme Court, ERs 1.3, 1.4, 1.5, 1.16, 3.1, 3.2, 5.5, 8.4(c), 8.4(d) and Rule 54(c). [Joint Prehearing Statement, p. 2.]

In File No. PDJ-2011-9079, Mr. Lassen was suspended for 30 days effective April 28, 2012, for violating Rule 42, Arizona Rules of Supreme Court, ERs 1.3, 1.4(a)(2)-(4), 1.4(b), 2.1, 8.1, 8.4(c). Mr. Lassen was reinstated effective June 25, 2012; [Exhibits 81-83.]

In File No. 06-1529, Mr. Lassen was censured and placed on one year of probation (MAP) effective December 14, 2009. He was convicted of extreme DUI, reckless endangerment and leaving the scene of an injury accident in violation of Rule 42, Ariz. R. Sup. Ct., ER 8.4(b), and Rule 53(h)(1). [Exhibit 78-80.] Mr. Lassen's violations in the instant matter are similar in nature to his prior ethical rule violations;

Standard 9.22(b) dishonest or selfish motive. Mr. Lassen intentionally misled clients with a selfish motive and for his benefit.

Standard 9.22(c) pattern of misconduct. Mr. Lassen was previously suspended for engaging in the unauthorized practice of law, ER 5.5, and for additional violations present here;

Standard 9.22(d) multiple offenses. There are multiple counts of misconduct in this matter involving separate clients;

Standard 9.22(g) refusal to acknowledge wrongful nature of conduct;

Standard 9.22(i) substantial experience in the practice of law. Mr. Lassen was

[3] Mr. Lassen filed a motion to stay the suspension, which was denied. Mr. Lassen's appeal of this matter is pending before the Supreme Court.

licensed to practice law in Arizona in 1978; and

Standard 9.22(j) indifference to making restitution. Mr. Lassen has failed to refund any unearned fees or to make restitution to clients.

Mr. Lassen offered no evidence of any mitigating factors, therefore, the Hearing Panel determined there are no mitigating factors present in the record.

VII. CONCLUSION

It has long been established that the object of lawyer discipline is not to punish the lawyer, but to protect the public, the profession and the administration of justice. *Peasley, supra* at ¶ 64, 90 P.3d at 778. Based on the facts, conclusions of law, and application of the *Standards*, including aggravating and mitigating factors, the Panel determine that disbarment is the appropriate sanction. Accordingly,

IT IS ORDERED:

Mr. Lassen is disbarred from the practice of law effective immediately.

IT IS FURTHER ORDERED that Mr. Lassen shall pay the following amounts of restitution to the following individuals:

Restitution

1) Danny King or authorized representative for attorney's fees and costs in the amount of $13,897.50;
2) The defendants in the Mohave County Superior Court case of *Ellico v. Hackberry School District, et. al.*, CV2011-01182 for attorney's fees and costs in the amount of $23,116.00.
3) Julie Deese in the amount of $6,917.95.
4) Wells Fargo or authorized representative in the amount of $44,934.80.
5) ACIP in the amount of $11,500.00.

IT IS FURTHER ORDERED that Mr. Lassen shall pay costs and expenses in this matter.

A final judgment and order will follow.

DATED this 28th day of August, 2014.

William J. O'Neil

William J. O'Neil, Presiding Disciplinary Judge

CONCURRING

Michael Snitz

Michael Snitz Volunteer Public Member

Ralph Wexler

Ralph Wexler, Volunteer Public Member

Copies of the foregoing mailed/emailed
this 28th day of August, 2014, to:

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Respondent

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Phoenix, AZ 85016-6266

by: MSmith

SUPREME COURT OF ARIZONA

In the Matter of a Suspended Member of the State Bar of Arizona	)	Arizona Supreme Court No. SB-14-0048-AP
GARY L. LASSEN, Attorney No. 5259	)	Office of the Presiding Disciplinary Judge No. PDJ20149026
Respondent.	)	**FILED 3/20/2015**

DECISION ORDER

Pursuant to Rule 59, Rules of the Supreme Court, Respondent Gary L. Lassen appealed the hearing panel's findings and imposition of disbarment. The Court has considered the parties' briefs and the record in this matter.

With respect to **Count One**, the Court accepts the panel's determination that Lassen violated ERs 1.1, 3.1, and 8.4(d). We reject the panel's determination that Lassen violated ERs 3.3(a)(1), 4.1(a), and 8.4(c). These ethical rules prohibit a lawyer from making false statements to a court or to others. Neither the State Bar nor the panel has explained how Lassen's conduct in filing appellate briefs that failed to comply with the requirements of the Arizona Rules of Civil Appellate Procedure implicated these ethical rules. Further, the State Bar presented no additional evidence to explain how Lassen's appellate briefs misrepresented the record.

With respect to **Count Two**, the Court accepts the panel's determination that Lassen violated ERs 1.2, 1.4(a), 1.5(a), 1.16,

Exhibit 3

5.5, and 8.4(c).

With respect to **Count Three**, the Court accepts the panel's determination that Lassen violated ERs 1.1, 1.2, 1.3, 1.4, 3.2, and 8.4(d). We reject the panel's determination that Lassen violated ERs 1.7(a)(2) and 3.1. ER 1.7(a)(2) addresses the issue of a concurrent conflict of interest. Neither the State Bar nor the panel pointed to any evidence in the record that would support this ethical violation. ER 3.1 prohibits a lawyer from pursuing a claim with no good faith basis in law and fact. The State Bar failed to present any evidence to support the allegation that Lassen did not have a good faith basis in law and fact for pursuing the underlying discrimination claim.

With respect to **Count Four**, the Court accepts the panel's determination that Lassen violated ERs 1.3, 3.1, 3.3, 3.4, and 8.4(d). We reject the panel's determination that Lassen violated ER 1.2. The State Bar alleged and the panel found that Lassen violated this ethical rule by failing to abide by his client's instructions. Lassen's client did not testify at the discipline hearing and the State Bar presented no other evidence to support this finding.

With respect to **Count Five**, the Court accepts the panel's determination that Lassen violated ERs 1.1, 1.3, 3.2, 8.1, 8.4(d), and Rule 54(d)(2). We reject the panel's determination that Lassen violated ERs 3.1 and 5.5. The violation of ER 3.1 was based on the same conduct alleged in Count Four: filing meritless claims and

unauthorized defaults. Lassen cannot be charged twice for the same conduct. The State Bar alleged that Lassen violated ER 5.5 by engaging in the practice of law during his suspension in 2012. There was no evidence presented to support a finding that Lassen engaged in the unauthorized practice of law with anyone related to this count.

With respect to the sanction, the Court affirms the imposition of disbarment, restitution, and costs and expenses of the discipline proceeding.

IT IS ORDERED affirming the decision and sanction of the hearing panel as set forth in this order.

DATED this 20th day of March, 2015.

The foregoing instrument is a full, true and correct copy of the original on file in this office.

ATTEST _____
Janet Johnson, Clerk of the Supreme Court
State of Arizona
By Karen Adler Deputy

SCOTT BALES
Chief Justice

TO:
Gary L Lassen
Craig D Henley
Jennifer Albright
Sandra Montoya
Maret Vessella
Don Lewis
Beth Stephenson
Perry Thompson
Mary Pieper
Netz Tuvera
Lexis Nexis

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BEFORE THE PRESIDING DISCIPLINARY JUDGE OF THE SUPREME COURT OF ARIZONA

IN THE MATTER OF A DISBARRED MEMBER OF THE STATE BAR OF ARIZONA, **GARY L. LASSEN,** **Bar No. 005259,** Respondent.	**PDJ 2014-9082** **COMPLAINT** State Bar Nos. 14-0401 and 14-0784

Complaint is made against Respondent as follows:

GENERAL ALLEGATIONS

1. At all times relevant, Respondent was a lawyer licensed to practice law in the State of Arizona having been first admitted to practice on April 22, 1978.

2. By Final Judgment and Order dated August 28, 2014, Respondent was disbarred in PDJ-2014-9026 for violating Rule 42, Arizona Rules of Supreme Court, ERs 1.1 [3x], 1.2 [3x], 1.3 [3x], 1.4 [2x], 1.5 [1x], 1.16 [1x], 1.7(a)(2) [1x], 3.1 [4x], 3.2 [2x], 3.3 [2x], 3.4 [1x], 4.1(a) [1x], 5.5 [2x], 8.1 [1x], 8.4(c) [2x], 8.4(d) [4x] and Rule 54(d)(2) [1x].

3. A notice of appeal was timely filed on behalf of Respondent and is currently pending.

4. By Final Judgment and Order dated March 13, 2014, Respondent was suspended in PDJ-2013-9068 for a period of Two (2) Years effective May 7, 2014 for

Exhibit
4

violating Rule 42, Arizona Rules of Supreme Court, ERs 1.3, 1.4, 1.5, 1.16, 3.1, 3.2, 5.5, 8.4(c), 8.4(d) and Rule 54(c), Arizona Rules of Supreme Court.

5. While a notice of appeal was timely filed on behalf of Respondent and is currently pending, the court denied a motion to stay the execution of the sanction.

6. By Agreement for Discipline by Consent, Respondent was suspended in PDJ-2012- for a period of Thirty (30) Days effective April 28, 2012 for violating Rule 42, Arizona Rules of Supreme Court, ERs 1.3, 1.4(a)(2)-(4), 1.4(b), 2.1, 8.1, 8.4(c). Respondent was reinstated on June 25, 2012.

7. By Final Judgment and Order dated December 14, 2009, Respondent was censured (currently, reprimand) and placed on probation for a conviction of extreme DUI, endangerment and leaving the scene of an injury accident in violation of Rule 42, Arizona Rules of Supreme Court, ER 8.4(b), and Rule 53(h)(1), Arizona Rules of Supreme Court.

COUNT ONE (File no. 14-0401/Bejarano)

8. In July 2006, Complainant signed a one-year contract with the School District as the Assistant Superintendent of Teaching and Learning.

9. In or around March 2007, Complainant expressed concern about the director of staff development and was later authorized to write the director with a letter that his contract would not be renewed.

10. In or around April 2007, the Board of Directors for the School District unanimously extended Complainant's contract for another one-year term.

11. Shortly thereafter, an unrelated school employee filed a complaint against Complainant alleging a hostile work environment and an independent investigator hired to investigate the allegations later concluded that:

a. Complainant did not follow due process investigation protocol and common sense standards;

b. Complainant delayed reporting the results of her investigation;

c. Complainant improperly excluded the principal from meeting witnesses;

d. Complainant misstated two witnesses' statements; and

e. Complainant apparently wanted her investigation to reach a certain conclusion.

12. In November 2007, Complainant filed a complaint with the Attorney General's Office alleging that the Board violated the Open Meetings Law when they heard issues related to her investigation in Executive Session on November 1, 2007.

13. In December 2007, Complainant contacted Respondent for representation.

14. In or around January 2008, Complainant was placed on administrative leave and informed that her contract would not be renewed later that spring.

15. In early 2008, Respondent began actively representing Complainant purportedly on a contingency basis.

16. To the best of Complainant's recollection, Respondent did not provide her with any confirmatory writing regarding the representation. To date, Respondent has failed to provide the State Bar with a response to this investigation.

17. On April 10, 2008, the Board unanimously voted not to renew Complainant's contact and later paid the balance of the contract.

18. In May 2008, Complainant began identifying issues that she had certain "support issues" that she wanted resolved quickly including, but not limited to, the School District's payment for vacation and sick time.

19. Complainant's attempts to contact Respondent regarding these issues included three e-mails dated May 15th, 16th and 17th, an e-mail dated September 10, 2008 and a final e-mail dated November 15, 2008.

20. On July 28, 2008, Complainant wrote Respondent an e-mail complaining about delays in the case and Respondent's failure to address the "support issues".

21. In that same e-mail, Complainant also requested a meeting in order to determine whether Respondent was too busy to handle her "contingency" case.

22. That same day, Respondent responded and claimed that he had prepared a pretty detailed complaint but needed to make one more set of revisions before sending it to Complainant for review.

23. On July 31, 2008, Respondent filed the complaint and Arizona attorney Georgia Staton began representing the School District in Maricopa County Superior Court case of *Bejarano v. Roosevelt Elementary School District, et. al.*, CV2008-018174.

24. During her representation, Ms. Staton requested Complainant's availability for a deposition and also submitted interrogatories to Respondent.

25. In October 2008, Complainant submitted her interrogatory responses to Respondent.

26. On November 12, 2008, Complainant e-mailed Respondent complaining that the interrogatory responses contained grammatical errors and were changed without her knowledge or consent.

27. After months of inactivity, Respondent filed a Motion to Set and Certificate of Readiness on May 8, 2009.

28. On June 5, 2009, the parties requested that Scott & Skelly, L.L.C. serve as mediator in the lawsuit and agreed by participation that each of the lawyers and clients will share joint responsibility for their respective pro-rata portion of the mediation fees.

29. On August 24, 2009, opposing counsel filed a Motion for Summary Judgment regarding all of Complainant's claims.

30. On August 25, 2009, the parties participated in the mediation with Scott & Skelly, L.L.C. The first of several monthly bills were mailed to Respondent on August 26, 2009 for One Thousand Thirty Five Dollars ($1035.00), representing Complainant's/Respondent's pro-rata share of total mediation fees.

31. On October 23, 2009, the Court granted the fully briefed Motion for Summary Judgment without oral argument finding that "(Complainant) has simply failed to present facts or law which allow her to sue for relief she seeks."

32. By minute entry dated December 1, 2009, the case was administratively transferred to a new judge and all future hearings were ordered to be heard by the new judge.

33. After filing a Motion for New Trial, Motion for Clarification of Minute Entry and Objection to the Form of Judgment submitted by opposing counsel, the Court issued a minute entry on December 21, 2009 finding in pertinent part:

> "The simple fact is that the Court found Defendant's positions to be legally and factually appropriate on every point. For example...inadequate performance of one's job does not prevent one from being fired regardless of how legitimate one's whistle blowing activity....Moreover, Plaintiff was not fired; instead, her contract was not renewed."

34. The Court then denied all of the pending motions and awarded Forty Two Thousand Eight Hundred Fifty Two Dollars and 05/100 in attorney's fees ($42,852.05), Two Thousand One Hundred Forty Seven Dollars and 95/100 ($2147.95) in non-taxable costs and Three Thousand Four Hundred Seven Dollars and 17/100 ($3407.15) in taxable costs against Complainant. A formal judgment was entered on January 13, 2010.

35. On February 11, 2010, Respondent contemporaneously filed a Notice of Appeal and pleading titled Motion for Relief From Judgment Under Rule 60(c) in which Respondent claims receipt of new evidence supporting one of Complainant's claims.

36. After receiving responsive pleadings from the Defendants, the Court denied the motion after identifying the possible jurisdictional problems created by Respondent's contemporaneous filing of the motion and a Notice of Appeal.

37. On March 3rd and 4th, 2010, after receiving a request for a status of the case, Respondent stated:

a. "We have not had a ruling or any hearing set on our trial court motion. I need to let you know that I thinking the appeal is the likely only way to get Justice. That will unfortunately require additional appeal fees and costs to be incurred. I thus need to impose upon you to send or deliver more funds like you have so graciously done in recent months. Please be aware that I remain confident that in the end that we will win, and that these monies, and much more will be coming our way."

b. "I fully understand your concerns, but I want you to remember that we ran into a scorched earth policy by the insurance company's lawyers and a lazy initially assigned Judge."

38. On June 22, 2010, Respondent received another monthly request for payment from Scott & Skelly, L.L.C.; this one containing a handwritten note requesting a phone call regarding the status of the payment.

39. On August 13, 2010, Scott & Skelly, L.L.C. filed the Arcadia-Biltmore Justice Court case of *Scott & Skelly, LLC v. Lassen and Bejarano*, CC2010-469389 SC naming both Respondent and Complainant and seeking a judgment of One Thousand Thirty Five Dollars ($1035.00).

40. On August 24, 2010, a copy of the Summons and Complaint was personally served upon Respondent.

41. On September 12, 2010, Respondent repeated his statement about the judge in an e-mail stating, among other things, "I have been scouring the prior pleadings and briefs and exhiibits (sic) and intend to emphasize:...4. The trial Judge was lazy."

42. On December 8, 2010, the Court entered a judgment against both Defendants in the Arcadia-Biltmore lawsuit.

43. On April 12, 2011, Division One of the Court of Appeals filed a Memorandum Decision in *Bejarano v. Roosevelt Elementary School District, et. al.*, 1 CA-CV 10-0231 affirming the lower court rulings.

44. All communication between Complainant and Respondent ceased between June 2011 and early 2013.

45. While Respondent was still attorney of record for Complainant, Respondent was suspended in State Bar file 10-1508 for thirty days for violations of 1.3, 1.4(a)(2)-(4), 1.4(b), 2.1, 8.1, 8.4(c), effective April 28, 2012. Respondent was reinstated on June 25, 2012.

46. On or about January 17, 2013, the School District obtained an order for Complainant's appearance at a Judgment Debtor Examination.

47. Complainant was personally served with the order of appearance, but alleges that Respondent failed to inform her of that she was compelled to appear or face possible arrest during her last discussions with Respondent.

48. On March 1, 2013, the Court issued a Civil Arrest Warrant directing any Peace Officer to arrest Complainant for her failure to appear at the Judgment Debtor Examination and further set a cash bond of One Thousand Dollars ($1000.00).

49. When Complainant learned of the arrest warrant from a former employer, she contacted Respondent who claimed that he was unaware of any of the events surrounding the arrest warrant. Complainant then contacted successor counsel, Thomas Ryan, for representation.

50. On March 12, 2013, a Motion to Quash the Civil Arrest Warrant was filed as Thomas Ryan began negotiating a settlement agreement on behalf of Complainant.

51. In early 2013, Complainant refinanced her home and paid the amounts contained in the Superior Court and Justice Court judgments.

52. On March 26, 2013, a Satisfaction of Judgment was filed in favor of Complainant indicating a full payment of the January 13, 2010 judgment in the Superior Court lawsuit.

53. On March 28, 2013, a Satisfaction of Judgment was filed in favor of Complainant indicating a full payment of the December 8, 2010 judgment in the Justice Court lawsuit.

54. Complainant has provided checks and receipts documenting purported "cost payments" of Forty Six Thousand One Forty Nine Dollars ($46,149.00).

Despite repeated demands, Respondent has not provided Complainant with an accounting of these funds.

55. On February 20, 2014, the State Bar mailed Respondent an initial screening letter requesting that a response to the allegations to be provided within twenty days. The initial screening letter also informed Respondent that his failure to fully and honestly respond to, or cooperate with the investigation are grounds for discipline pursuant to Rule 54(d) and Rule 42, Ariz.R.Sup.Ct., ER 8.1(b).

56. On March 19, 2014, the State Bar mailed Respondent a second request for a response to be provided within ten days. The second letter again informed Respondent that his failure to fully and honestly respond to, or cooperate with the investigation are grounds for discipline.

57. To date, Respondent has not responded to the State Bar regarding Complainant's allegations.

58. By engaging in the misconduct described above, Respondent violated the following ethical rules:

a. Rule 42, Ariz. R. Sup. Ct., ER 1.2 – Respondent failed to abide to his client's decisions concerning the representation particularly failing to take action on the "support issues" raised by Complainant at the beginning of the representation.

b. Rule 42, Ariz. R. Sup. Ct., ER 1.3 – Respondent failed to act diligently throughout the lawsuit and his representation of his client.

c. Rule 42, Ariz. R. Sup. Ct., ER 1.4 – Respondent failed to reasonably communicate with his client regarding the status of the case or respond to inquiries by the client.

d. Rule 42, Ariz. R. Sup. Ct., ER 1.5 – Respondent charged, collected and retained unreasonable fees during the representation which were not communicated to the client by writing.

e. Rule 42, Ariz. R. Sup. Ct., ER 1.15 – Respondent charged, collected and retained unreasonable fees during the representation and failed to return unauthorized or unearned fees to the client.

f. Rule 42, Ariz. R. Sup. Ct., ER 1.16 – Respondent failed to properly withdraw from the representation and take the steps to the extent reasonably practicable to protect a client's interests.

g. Rule 42, Ariz. R. Sup. Ct., ER 3.2 – Respondent failed to make reasonable efforts to expedite litigation consistent with the interests of his clients.

h. Rule 42, Ariz. R. Sup. Ct., ER 8.1 – Respondent knowingly failed to respond to a lawful demand for information from the disciplinary authority in connection with the instant investigation.

i. Rule 42, Ariz. R. Sup. Ct., ER 8.2(a) –Respondent made statements with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge.

j. Rule 42, Ariz. R. Sup. Ct., ER 8.4(c) – Respondent knowingly engaged in conduct involving dishonesty, fraud, deceit or misrepresentations.

k. Rule 42, Ariz. R. Sup. Ct., ER 8.4(d) – Respondent engaged in conduct which was prejudicial to the administration of justice.

l. Rule 54(d), Ariz. R. Sup. Ct. – Respondent refused to cooperate, furnish information or respond promptly to any inquiry or request from bar counsel relevant to the pending charges.

m. Rule 72, Ariz. R. Sup. Ct. – Respondent failed to notify the Court and his client regarding his April 2012 suspension.

COUNT TWO (File no. 14-0784/Riccio)

59. In or around October 2012, Complainant and his wife paid Respondent Five Thousand Dollars ($5000.00) in order to represent them regarding certain employment disputes.

60. On February 22, 2013, Complainants paid Respondent another Two Thousand Dollars ($2000.00) bringing the total amount paid to Seven Thousand Dollars ($7000.00).

61. Respondent explained that, during his representation, Respondent would tell the opposing party an hourly billing rate different than the rate actually billed in order to "have some skin in the game."

62. Complainants signed a fee agreement setting forth the hourly rate of One Hundred Twenty Five Dollars per hour ($125.00/hr) along with thirty percent (30%) of the anticipated settlement proceeds.

63. Between October 2012 and February 2013, Complainant and his wife met with Respondent approximately four times.

64. By e-mail dated March 12, 2013, Respondent contacted Complainant regarding a "global" notice of claim purportedly being prepared on Complainant's behalf. Among other things, Respondent promised that a draft would be prepared quickly so that "we can get it served next week".

65. Over the course of the next year, Respondent randomly met and e-mailed Complainant claiming to be in the process of preparing the notice of claim and a letter of intent.

66. On April 11, 2013, Complainant e-mailed Respondent that Complainant received notice that his wife was approved to become his beneficiary – thereby eliminating one of the proposed sections of Complainant's notice of claim.

67. Complainant stated, in part, "[s]o, if you haven't sent out the claim, you can strike that and if you have already, *se* (sic) *la vie*!"[1]

68. Respondent did not respond to the April 11, 2013 e-mail.

[1] Emphasis in original.

69. Complainant attempted to contact Respondent in August and received a recorded message that the office was closed beginning July 22, 2013.

70. Complainant and his wife traveled to Europe between August 2013 and October 2013.

71. Upon their return in October 2013, Complainant attempted to contact Respondent and again received the same recording that the offices were closed beginning July 22, 2013.

72. Between January 2014 and February 2014, Complainant sent Respondent several e-mails alleging that Respondent failed to perform the agreed upon legal services or take any substantive action.

73. On February 18, 2014, Complainant e-mailed Respondent stating, in pertinent part:

a. "Please note it has been ***seven*** weeks since I communicated to you and if you had not sent the letter of intent and filed the claim last year, I wanted you to return my $2000.00 back."[2]

b. "This email below sent to me in March 2013 is is (sic) just one of many where you said you would get the letter out within a week- and did not."

c. "Your delays in sending notice cost me my sick leave of 34 days and much, much more. I am willing to move on, but I am not willing to do do (sic) so without you returning the $2000.00. The email below from you is clearly stating that you were going to send the notice in mid-March, and from the time in December before this when you told me you had some health issues, until now, you have consistently told me one thing and found an excuse to not follow through."

[2] Emphasis in original.

74. On February 19, 2014, Respondent responded by acknowledging the receipt of Seven Thousand Dollars ($7000.00) and reciting certain discussions that purportedly occurred between Respondent and others.

75. The e-mail further states, among other things, that "[i]t is important to note that your total payment to me did not come close toch (sic) the time expended even as of January 28, 2013., (sic)...I do apologize for now (sic) responding earlier, but the situation with my secretary who appears unable to carry on has been a difficult and delicate one. Again, I have no problem with sitting down and going over everything with you. .(sic)".

76. On Febuary 20, 2014, Complainant responded stating, in pertinent part, "Now, I may have used up the money for March, April, May and June...I don't know. I do know that we just spent over six weeks going back and forth trying to sort this out. So, send me a statement for time spent over the six weeks...if that time utilizes the $2000.00 then we are finished and I will not pursue this further...Now again, to be clear, **send us the itemized statement of date and time you worked on my behalf**...".[3]

77. As of the date of this report, Complainant has not received a response to the February 20, 2014 e-mail.

78. Despite repeated requests, Respondent has failed to provide Complainant an accounting for the funds paid during the representation.

---

[3] Emphasis in original.

79. On March 27, 2014, the State Bar mailed Respondent an initial screening letter requesting that a response to the allegations to be provided within twenty days. The initial screening letter also informed Respondent that his failure to fully and honestly respond to, or cooperate with the investigation are grounds for discipline pursuant to Rule 54(d) and Rule 42, Ariz.R.Sup.Ct., ER 8.1(b).

80. On April 22, 2014, the State Bar mailed Respondent a second request for a response to be provided within ten days. The second letter again informed Respondent that his failure to fully and honestly respond to, or cooperate with the investigation are grounds for discipline.

81. To date, Respondent has not responded to the State Bar regarding Complainant's allegations.

82. By engaging in the misconduct described above, Respondent violated the following ethical rules:

a. Rule 42, Ariz. R. Sup. Ct., ER 1.2 - Respondent failed to abide to his client's decisions concerning the representation particularly failing to prepare and file the notice of claim or letter of intent.

b. Rule 42, Ariz. R. Sup. Ct., ER 1.3 - Respondent failed to act diligently throughout the lawsuit and his representation of his client.

c. Rule 42, Ariz. R. Sup. Ct., ER 1.4 - Respondent failed to reasonably communicate with his client regarding the status of the case or respond to inquiries by the client.

d. Rule 42, Ariz. R. Sup. Ct., ER 1.5 – Respondent charged, collected and retained unreasonable fees during the representation.

e. Rule 42, Ariz. R. Sup. Ct., ER 1.15 – Respondent failed to account for or return the unearned fees to the client.

f. Rule 42, Ariz. R. Sup. Ct., ER 1.16 – Respondent failed to properly withdraw from the representation and take the steps to the extent reasonably practicable to protect a client's interests.

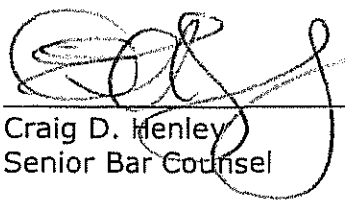
g. Rule 42, Ariz. R. Sup. Ct., ER 8.1 – Respondent knowingly failed to respond to a lawful demand for information from the disciplinary authority in connection with the instant investigation.

h. Rule 42, Ariz. R. Sup. Ct., ER 8.4(c) – Respondent knowingly engaged in conduct involving dishonesty, fraud, deceit or misrepresentations.

i. Rule 54(d), Ariz. R. Sup. Ct. – Respondent refused to cooperate, furnish information or respond promptly to any inquiry or request from bar counsel relevant to the pending charges.

DATED this 22nd day of September, 2014.

STATE BAR OF ARIZONA



Craig D. Henley
Senior Bar Counsel

Original filed with the Disciplinary Clerk of
the Office of the Presiding Disciplinary Judge
of the Supreme Court of Arizona
this 22nd day of September, 2014.

by: Robert T. Brow
CDH/rtb

BEFORE THE ATTORNEY DISCIPLINE PROBABLE CAUSE COMMITTEE OF THE SUPREME COURT OF ARIZONA

IN THE MATTER OF A SUSPENDED MEMBER OF THE STATE BAR OF ARIZONA,

GARY L. LASSEN,
Bar No. 005259,

Respondent.

No. 14-0401

PROBABLE CAUSE ORDER

The Attorney Discipline Probable Cause Committee of the Supreme Court of Arizona ("Committee") reviewed this matter on June 6, 2014, pursuant to Rules 50 and 55, Ariz. R. Sup. Ct., for consideration of the State Bar's Report of Investigation and Recommendation.

By a vote of 7-0-2[1], the Committee finds probable cause exists that Respondent violated the Rules of the Supreme Court of Arizona:

IT IS THEREFORE ORDERED pursuant to Rules 55(c) and 58(a), Ariz. R. Sup. Ct., authorizing the State Bar Counsel to prepare and file a complaint with the Disciplinary Clerk.

Parties may not file motions for reconsideration of this Order.

DATED this 11th day of June, 2014.

Lawrence F. Winthrop

Judge Lawrence F. Winthrop, Chair
Attorney Discipline Probable Cause
Committee of the Supreme Court of Arizona

[1] Committee members Daisy Flores and Bill Friedl did not participate in this matter.

Original filed this 12th day
of June, 2014 with:

Lawyer Regulation Records Manager
State Bar of Arizona
4201 North 24th Street, Suite 100
Phoenix, Arizona 85016-6266

Copy mailed this 17th day
of June, 2014, to:

Gary L. Lassen
1234 South Power Road,
Suite 254
Mesa, Arizona 85206-3761
Respondent

Copy emailed this 17th day
of June, 2014, to:

Attorney Discipline Probable Cause Committee
of the Supreme Court of Arizona
1501 West Washington Street, Suite 104
Phoenix, Arizona 85007
E-mail: ProbableCauseComm@courts.az.gov

Lawyer Regulation Records Manager
State Bar of Arizona
4201 North 24th Street, Suite 100
Phoenix, Arizona 85016-6266

by: Rodney T. Brue

BEFORE THE ATTORNEY DISCIPLINE PROBABLE CAUSE COMMITTEE OF THE SUPREME COURT OF ARIZONA

IN THE MATTER OF A SUSPENDED MEMBER OF THE STATE BAR OF ARIZONA,

GARY L. LASSEN,
Bar No. 005259,

Respondent.

No. 14-0784

PROBABLE CAUSE ORDER

The Attorney Discipline Probable Cause Committee of the Supreme Court of Arizona ("Committee") reviewed this matter on June 6, 2014, pursuant to Rules 50 and 55, Ariz. R. Sup. Ct., for consideration of the State Bar's Report of Investigation and Recommendation.

By a vote of 7-0-2[1], the Committee finds probable cause exists that Respondent violated the Rules of the Supreme Court of Arizona:

IT IS THEREFORE ORDERED pursuant to Rules 55(c) and 58(a), Ariz. R. Sup. Ct., authorizing the State Bar Counsel to prepare and file a complaint with the Disciplinary Clerk.

Parties may not file motions for reconsideration of this Order.

DATED this 11th day of June, 2014.

Lawrence F. Winthrop

Judge Lawrence F. Winthrop, Chair
Attorney Discipline Probable Cause
Committee of the Supreme Court of Arizona

[1] Committee members Daisy Flores and Bill Friedl did not participate in this matter.

Original filed this 12th day
of June, 2014 with:

Lawyer Regulation Records Manager
State Bar of Arizona
4201 North 24th Street, Suite 100
Phoenix, Arizona 85016-6266

Copy mailed this 17th day
of June, 2014, to:

Gary L. Lassen
1234 South Power Road,
Suite 254
Mesa, Arizona 85206-3761
Respondent

Copy emailed this 17th day
of June, 2014, to:

Attorney Discipline Probable Cause Committee
of the Supreme Court of Arizona
1501 West Washington Street, Suite 104
Phoenix, Arizona 85007
E-mail: ProbableCauseComm@courts.az.gov

Lawyer Regulation Records Manager
State Bar of Arizona
4201 North 24th Street, Suite 100
Phoenix, Arizona 85016-6266

by: Rodney T Bruce

Craig D. Henley, Bar No. 018801
Senior Bar Counsel
State Bar of Arizona
4201 North 24th Street, Suite 100
Phoenix, Arizona 85016-6266
Telephone: (602) 340-7272
Email: LRO@staff.azbar.org

BEFORE THE PRESIDING DISCIPLINARY JUDGE OF THE SUPREME COURT OF ARIZONA

IN THE MATTER OF A DISBARRED MEMBER OF THE STATE BAR OF ARIZONA, **GARY L. LASSEN,** **Bar No. 005259,** Respondent.	**PDJ 2014-9082** **MOTION TO AMEND INITIAL COMPLAINT** State Bar Nos. 14-0401 and 14-0784

The State Bar of Arizona, through undersigned bar counsel, moves for leave to file an amended complaint in this matter pursuant to Rule 47(b) and Rule 47(j), Ariz. R. Sup. Ct.

Attached hereto as Exhibit A is a copy of the proposed amended complaint that reflects additions with two additional counts. This motion is made in the interest of justice and judicial economy and is supported by the following memorandum of points and authorities.

MEMORANDUM OF POINTS AND AUTHORITIES

I. Facts.

The State Bar filed a complaint against Respondent on September 22, 2014. On September 25, 2014, the complaint was served on Respondent by mailing a copy of the complaint by certified mail/delivery restricted to addressee and regular first class mail to Respondent at the address of record as provided by Respondent to the

Exhibit
5

Membership Records Department of the State Bar of Arizona. Respondent filed an answer on October 15, 2014.

On October 27, 2014, the Court scheduled a two day trial in this matter on January 12-13, 2015.

On October 27, 2014 and December 22, 2014, the State Bar obtained Probable Cause Orders from the Attorney Discipline Probable Cause Committee in State Bar files 14-2071 and 14-2297, respectively. See Exhibit B.

II. Legal Argument.

"Prior to the commencement of a hearing on the merits, the complaint may be amended with leave of the presiding disciplinary judge, who may permit the inclusion of additional charges." Rule 47(b)(2), Ariz. R. Sup. Ct. If the Presiding Disciplinary Judge grants a motion to amend a complaint, "the (current) hearing date may be continued to provide the respondent with adequate time to meet the factual allegations and alleged ethical violations first presented in the amended pleading." *Id.*

Similarly, Supreme Court Rule 47(j) states in part, "for good cause shown and in the interest of justice any order or judgment may be entered."

Additionally, Civil Rule 15(a), Arizona Rules of Civil Procedure, states in part:

> "[A] party may amend the party's pleading only by leave of the court or by written consent of the adverse party. Leave to amend shall be freely given when justice requires."

A comparison of the rules reflects that the two Supreme Court rules embody the same policy established in Civil Rule 15(a). Therefore, although Civil Rule 15(a) is not specifically incorporated into the lawyer discipline procedural rules, an analysis

of case law interpreting that rule is useful to determining the interpretation that should be given to the Supreme Court rules.

In civil cases, leave to amend a civil complaint, although discretionary, should be liberally granted. *Owen v. Superior Ct.*, 133 Ariz. 75, 79, 649 P.2d 278, 282 (1982). Generally, "[a]mendments [in civil cases] will be permitted unless the court finds undue delay in the request, bad faith, undue prejudice, or futility in the amendment. *Bishop v. State Dep't of Corrections*, 172 Ariz. 472, 474-75, 837 P.2d 1207, 1209-10 (App. 1992).

While the State Bar's motion to amend will not cause undue prejudice or unduly delay the proceedings, it will allow the Court to hear all of the currently pending bar charges against the Respondent.

In addition to the grounds set forth above to grant the State Bar's motion to amend, "[p]ublic policy favors litigating a case on the merits." *State Compensation Fund v. Yellow Cab Co.*, 197 Ariz. 120, 125-26, 3 P.3d 1040, 1045-46 (App. 1999).

Although the filing of the amended complaint may cause the continuance of the currently scheduled proceedings to allow Respondent to file an answer to the amended complaint as anticipated by the Rule, there is no prejudice to the Respondent as he is currently suspended for eighteen months effective May 7, 2014 and disbarred pending appeal.

Finally, as explained above, the delay will be minimal since Respondent would have to file his answer ten days after he is served with the amended complaint. Rule 47(b)(2), Ariz. R. Sup. Ct.

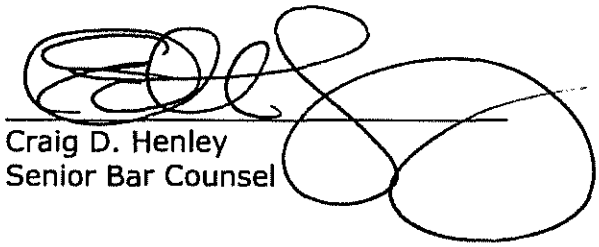
III. Conclusion

The lawyer discipline procedural rules and related case law support granting the State Bar's Motion to Amend Complaint. Similarly, the motion will not prejudice and will in fact allow the Court and parties to adjudicate all of the bar charges currently pending against the Respondent in one case[1].

Accordingly, the State Bar requests that the Court grant the motion, vacate the currently scheduled trial and schedule deadlines in accordance with Rule 47(b)(2), Ariz. R. Sup. Ct.

RESPECTFULLY SUBMITTED this 24th day of December 2014.

STATE BAR OF ARIZONA



Craig D. Henley
Senior Bar Counsel

Original filed with the Disciplinary Clerk of
the Office of the Presiding Disciplinary Judge
of the Supreme Court of Arizona
this 24th day of December, 2014.

Copies of the foregoing mailed/emailed
this 24th day of December, 2014, to:

Gary L. Lassen
1234 South Power Road,
Suite 254
Mesa, Arizona 85206-3761
Email: gary@gllplc.com
Respondent

[1] Alternatively, the Court and the parties will be forced to proceed in two separate proceedings.

Copy of the foregoing emailed
this 24th day of December, 2014, to:

Honorable William J. O'Neil
Presiding Disciplinary Judge
Supreme Court of Arizona
1501 West Washington Street, Suite 102
Phoenix, Arizona 85007
Email: officepdj@courts.az.gov

Copy of the foregoing hand-delivered
this 24th day of December 2014, to:

Lawyer Regulation Records Manager
State Bar of Arizona
4201 North 24th Street, Suite 100
Phoenix, Arizona 85016-6266

by: Rodney T. Bury
CDH/ltb

EXHIBIT A

Craig D. Henley, Bar No. 018801
Senior Bar Counsel
State Bar of Arizona
4201 North 24th Street, Suite 100
Phoenix, Arizona 85016-6266
Telephone: (602) 340-7272
Email: LRO@staff.azbar.org

BEFORE THE PRESIDING DISCIPLINARY JUDGE OF THE SUPREME COURT OF ARIZONA

IN THE MATTER OF A DISBARRED MEMBER OF THE STATE BAR OF ARIZONA, **GARY L. LASSEN,** **Bar No. 005259,** Respondent.	**PDJ 2014-9082** **PROPOSED FIRST AMENDED COMPLAINT** State Bar Nos. 14-0401, 14-0784, 14-2071 and 14-2297

Complaint is made against Respondent as follows:

GENERAL ALLEGATIONS

1. At all times relevant, Respondent was a lawyer licensed to practice law in the State of Arizona having been first admitted to practice on April 22, 1978.

2. By Final Judgment and Order dated August 28, 2014, Respondent was disbarred in PDJ-2014-9026 for violating Rule 42, Arizona Rules of Supreme Court, ERs 1.1 [3x], 1.2 [3x], 1.3 [3x], 1.4 [2x], 1.5 [1x], 1.16 [1x], 1.7(a)(2) [1x], 3.1 [4x], 3.2 [2x], 3.3 [2x], 3.4 [1x], 4.1(a) [1x], 5.5 [2x], 8.1 [1x], 8.4(c) [2x], 8.4(d) [4x] and Rule 54(d)(2) [1x].

3. A notice of appeal was timely filed on behalf of Respondent and is currently pending.

4. By Final Judgment and Order dated March 13, 2014, Respondent was suspended in PDJ-2013-9068 for a period of Two (2) Years effective May 7, 2014 for violating Rule 42, Arizona Rules of Supreme Court, ERs 1.3, 1.4, 1.5, 1.16, 3.1, 3.2, 5.5, 8.4(c), 8.4(d) and Rule 54(c), Arizona Rules of Supreme Court.

5. While a notice of appeal was timely filed on behalf of Respondent and is currently pending, the court denied a motion to stay the execution of the sanction.

6. By Agreement for Discipline by Consent, Respondent was suspended in PDJ-2011-9079 for a period of Thirty (30) Days effective April 28, 2012 for violating Rule 42, Arizona Rules of Supreme Court, ERs 1.3, 1.4(a)(2)-(4), 1.4(b), 2.1, 8.1, 8.4(c). Respondent was reinstated on June 25, 2012.

7. By Final Judgment and Order dated December 14, 2009, Respondent was censured (currently, reprimand) in SB-06-1529 and placed on probation for a conviction of extreme DUI, endangerment and leaving the scene of an injury accident in violation of Rule 42, Arizona Rules of Supreme Court, ER 8.4(b), and Rule 53(h)(1), Arizona Rules of Supreme Court.

COUNT ONE (File No. 14-0401/Bejarano)

8. In July 2006, Complainant signed a one-year contract with the School District as the Assistant Superintendent of Teaching and Learning.

9. In or around March 2007, Complainant expressed concern about the director of staff development and was later authorized to write the director with a letter that his contract would not be renewed.

10. In or around April 2007, the Board of Directors for the School District unanimously extended Complainant's contract for another one-year term.

11. Shortly thereafter, an unrelated school employee filed a complaint against Complainant alleging a hostile work environment and an independent investigator hired to investigate the allegations later concluded that:

a. Complainant did not follow due process investigation protocol and common sense standards;

b. Complainant delayed reporting the results of her investigation;

c. Complainant improperly excluded the principal from meeting witnesses;

d. Complainant misstated two witnesses' statements; and

e. Complainant apparently wanted her investigation to reach a certain conclusion.

12. In November 2007, Complainant filed a complaint with the Attorney General's Office alleging that the Board violated the Open Meetings Law when they heard issues related to her investigation in Executive Session on November 1, 2007.

13. In December 2007, Complainant contacted Respondent for representation.

14. In or around January 2008, Complainant was placed on administrative leave and informed that her contract would not be renewed later that spring.

15. In early 2008, Respondent began actively representing Complainant purportedly on a contingency basis.

16. To the best of Complainant's recollection, Respondent did not provide her with any confirmatory writing regarding the representation. To date, Respondent has failed to provide the State Bar with a response to this investigation.

17. On April 10, 2008, the Board unanimously voted not to renew Complainant's contact and later paid the balance of the contract.

18. In May 2008, Complainant began identifying issues that she had certain "support issues" that she wanted resolved quickly including, but not limited to, the School District's payment for vacation and sick time.

19. Complainant's attempts to contact Respondent regarding these issues included three e-mails dated May 15th, 16th and 17th, an e-mail dated September 10, 2008 and a final e-mail dated November 15, 2008.

20. On July 28, 2008, Complainant wrote Respondent an e-mail complaining about delays in the case and Respondent's failure to address the "support issues".

21. In that same e-mail, Complainant also requested a meeting in order to determine whether Respondent was too busy to handle her "contingency" case.

22. That same day, Respondent responded and claimed that he had prepared a pretty detailed complaint but needed to make one more set of revisions before sending it to Complainant for review.

23. On July 31, 2008, Respondent filed the complaint and Arizona attorney Georgia Staton began representing the School District in Maricopa County Superior Court case of *Bejarano v. Roosevelt Elementary School District, et. al.*, CV2008-018174.

24. During her representation, Ms. Staton requested Complainant's availability for a deposition and also submitted interrogatories to Respondent.

25. In October 2008, Complainant submitted her interrogatory responses to Respondent.

26. On November 12, 2008, Complainant e-mailed Respondent complaining that the interrogatory responses contained grammatical errors and were changed without her knowledge or consent.

27. After months of inactivity, Respondent filed a Motion to Set and Certificate of Readiness on May 8, 2009.

28. On June 5, 2009, the parties requested that Scott & Skelly, L.L.C. serve as mediator in the lawsuit and agreed by participation that each of the lawyers and clients will share joint responsibility for their respective pro-rata portion of the mediation fees.

29. On August 24, 2009, opposing counsel filed a Motion for Summary Judgment regarding all of Complainant's claims.

30. On August 25, 2009, the parties participated in the mediation with Scott & Skelly, L.L.C. The first of several monthly bills were mailed to Respondent on August 26, 2009 for One Thousand Thirty Five Dollars ($1,035.00), representing Complainant's/Respondent's pro-rata share of total mediation fees.

31. On October 23, 2009, the Court granted the fully briefed Motion for Summary Judgment without oral argument finding that "(Complainant) has simply failed to present facts or law which allow her to sue for relief she seeks."

32. By minute entry dated December 1, 2009, the case was administratively transferred to a new judge and all future hearings were ordered to be heard by the new judge.

33. After filing a Motion for New Trial, Motion for Clarification of Minute Entry and Objection to the Form of Judgment submitted by opposing counsel, the Court issued a minute entry on December 21, 2009 finding in pertinent part:

> "The simple fact is that the Court found Defendant's positions to be legally and factually appropriate on every point. For example...inadequate performance of one's job does not prevent one from being fired regardless of how legitimate one's whistle blowing activity....Moreover, Plaintiff was not fired; instead, her contract was not renewed."

34. The Court then denied all of the pending motions and awarded Forty Two Thousand Eight Hundred Fifty Two Dollars and 05/100 in attorney's fees ($42,852.05), Two Thousand One Hundred Forty Seven Dollars and 95/100 ($2,147.95) in non-taxable costs and Three Thousand Four Hundred Seven Dollars and 17/100 ($3,407.15) in taxable costs against Complainant. A formal judgment was entered on January 13, 2010.

35. On February 11, 2010, Respondent contemporaneously filed a Notice of Appeal and pleading titled Motion for Relief From Judgment Under Rule 60(c) in which Respondent claims receipt of new evidence supporting one of Complainant's claims.

36. After receiving responsive pleadings from the Defendants, the Court denied the motion after identifying the possible jurisdictional problems created by Respondent's contemporaneous filing of the motion and a Notice of Appeal.

37. On March 3rd and 4th, 2010, after receiving a request for a status of the case, Respondent stated:

a. "We have not had a ruling or any hearing set on our trial court motion. I need to let you know that I thinking the appeal is the likely only way to get Justice. That will unfortunately require additional appeal fees and costs to be incurred. I thus need to impose upon you to send or deliver more funds like you have so graciously done in recent months. Please be aware that I remain confident that in the end that we will win, and that these monies, and much more will be coming our way."

b. "I fully understand your concerns, but I want you to remember that we ran into a scorched earth policy by the insurance company's lawyers and a lazy initially assigned Judge."

38. On June 22, 2010, Respondent received another monthly request for payment from Scott & Skelly, L.L.C.; this one containing a handwritten note requesting a phone call regarding the status of the payment.

39. On August 13, 2010, Scott & Skelly, L.L.C. filed the Arcadia-Biltmore Justice Court case of *Scott & Skelly, LLC v. Lassen and Bejarano*, CC2010-469389 SC naming both Respondent and Complainant and seeking a judgment of One Thousand Thirty Five Dollars ($1,035.00).

40. On August 24, 2010, a copy of the Summons and Complaint was personally served upon Respondent.

41. On September 12, 2010, Respondent repeated his statement about the judge in an e-mail stating, among other things, "I have been scouring the prior pleadings and briefs and exhiibits (sic) and intend to emphasize:...4. The trial Judge was lazy."

42. On December 8, 2010, the Court entered a judgment against both Defendants in the Arcadia-Biltmore lawsuit.

43. On April 12, 2011, Division One of the Court of Appeals filed a Memorandum Decision in *Bejarano v. Roosevelt Elementary School District, et. al.*, 1 CA-CV 10-0231 affirming the lower court rulings.

44. All communication between Complainant and Respondent ceased between June 2011 and early 2013.

45. While Respondent was still attorney of record for Complainant, Respondent was suspended in State Bar file 10-1508 for thirty days for violations of 1.3, 1.4(a)(2)-(4), 1.4(b), 2.1, 8.1, 8.4(c), effective April 28, 2012. Respondent was reinstated on June 25, 2012.

46. On or about January 17, 2013, the School District obtained an order for Complainant's appearance at a Judgment Debtor Examination.

47. Complainant was personally served with the order of appearance, but alleges that Respondent failed to inform her of that she was compelled to appear or face possible arrest during her last discussions with Respondent.

48. On March 1, 2013, the Court issued a Civil Arrest Warrant directing any Peace Officer to arrest Complainant for her failure to appear at the Judgment Debtor Examination and further set a cash bond of One Thousand Dollars ($1,000.00).

49. When Complainant learned of the arrest warrant from a former employer, she contacted Respondent who claimed that he was unaware of any of the events surrounding the arrest warrant. Complainant then contacted successor counsel, Thomas Ryan, for representation.

50. On March 12, 2013, a Motion to Quash the Civil Arrest Warrant was filed as Thomas Ryan began negotiating a settlement agreement on behalf of Complainant.

51. In early 2013, Complainant refinanced her home and paid the amounts contained in the Superior Court and Justice Court judgments.

52. On March 26, 2013, a Satisfaction of Judgment was filed in favor of Complainant indicating a full payment of the January 13, 2010 judgment in the Superior Court lawsuit.

53. On March 28, 2013, a Satisfaction of Judgment was filed in favor of Complainant indicating a full payment of the December 8, 2010 judgment in the Justice Court lawsuit.

54. Complainant has provided checks and receipts documenting purported "cost payments" of Forty Six Thousand One Forty Nine Dollars ($46,149.00).

Despite repeated demands, Respondent has not provided Complainant with an accounting of these funds.

55. On February 20, 2014, the State Bar mailed Respondent an initial screening letter requesting that a response to the allegations to be provided within twenty days. The initial screening letter also informed Respondent that his failure to fully and honestly respond to, or cooperate with the investigation are grounds for discipline pursuant to Rule 54(d) and Rule 42, Ariz.R.Sup.Ct., ER 8.1(b).

56. On March 19, 2014, the State Bar mailed Respondent a second request for a response to be provided within ten days. The second letter again informed Respondent that his failure to fully and honestly respond to, or cooperate with the investigation are grounds for discipline.

57. To date, Respondent has not responded to the State Bar regarding Complainant's allegations.

58. By engaging in the misconduct described above, Respondent violated the following ethical rules:

a. Rule 42, Ariz. R. Sup. Ct., ER 1.2 – Respondent failed to abide to his client's decisions concerning the representation particularly failing to take action on the "support issues" raised by Complainant at the beginning of the representation.

b. Rule 42, Ariz. R. Sup. Ct., ER 1.3 – Respondent failed to act diligently throughout the lawsuit and his representation of his client.

c. Rule 42, Ariz. R. Sup. Ct., ER 1.4 – Respondent failed to reasonably communicate with his client regarding the status of the case or respond to inquiries by the client.

d. Rule 42, Ariz. R. Sup. Ct., ER 1.5 – Respondent charged, collected and retained unreasonable fees during the representation which were not communicated to the client by writing.

e. Rule 42, Ariz. R. Sup. Ct., ER 1.15 – Respondent charged, collected and retained unreasonable fees during the representation and failed to return unauthorized or unearned fees to the client.

f. Rule 42, Ariz. R. Sup. Ct., ER 1.16 – Respondent failed to properly withdraw from the representation and take the steps to the extent reasonably practicable to protect a client's interests.

g. Rule 42, Ariz. R. Sup. Ct., ER 3.2 – Respondent failed to make reasonable efforts to expedite litigation consistent with the interests of his clients.

h. Rule 42, Ariz. R. Sup. Ct., ER 8.1 – Respondent knowingly failed to respond to a lawful demand for information from the disciplinary authority in connection with the instant investigation.

i. Rule 42, Ariz. R. Sup. Ct., ER 8.2(a) –Respondent made statements with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge.

j. Rule 42, Ariz. R. Sup. Ct., ER 8.4(c) – Respondent knowingly engaged in conduct involving dishonesty, fraud, deceit or misrepresentations.

k. Rule 42, Ariz. R. Sup. Ct., ER 8.4(d) – Respondent engaged in conduct which was prejudicial to the administration of justice.

l. Rule 54(d), Ariz. R. Sup. Ct. – Respondent refused to cooperate, furnish information or respond promptly to any inquiry or request from bar counsel relevant to the pending charges.

m. Rule 72, Ariz. R. Sup. Ct. – Respondent failed to notify the Court and his client regarding his April 2012 suspension.

COUNT TWO (File No. 14-0784/Riccio)

59. In or around October 2012, Complainant and his wife paid Respondent Five Thousand Dollars ($5,000.00) in order to represent them regarding certain employment disputes.

60. On February 22, 2013, Complainants paid Respondent another Two Thousand Dollars ($2,000.00) bringing the total amount paid to Seven Thousand Dollars ($7,000.00).

61. Respondent explained that, during his representation, Respondent would tell the opposing party an hourly billing rate different than the rate actually billed in order to "have some skin in the game."

62. Complainants signed a fee agreement setting forth the hourly rate of One Hundred Twenty Five Dollars per hour ($125.00/hr) along with thirty percent (30%) of the anticipated settlement proceeds.

63. Between October 2012 and February 2013, Complainant and his wife met with Respondent approximately four times.

64. By e-mail dated March 12, 2013, Respondent contacted Complainant regarding a "global" notice of claim purportedly being prepared on Complainant's behalf. Among other things, Respondent promised that a draft would be prepared quickly so that "we can get it served next week".

65. Over the course of the next year, Respondent randomly met and e-mailed Complainant claiming to be in the process of preparing the notice of claim and a letter of intent.

66. On April 11, 2013, Complainant e-mailed Respondent that Complainant received notice that his wife was approved to become his beneficiary – thereby eliminating one of the proposed sections of Complainant's notice of claim.

67. Complainant stated, in part, "[s]o, if you haven't sent out the claim, you can strike that and if you have already, *se* (sic) *la vie*!"[1]

68. Respondent did not respond to the April 11, 2013 e-mail.

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[1] Emphasis in original.

69. Complainant attempted to contact Respondent in August and received a recorded message that the office was closed beginning July 22, 2013.

70. Complainant and his wife traveled to Europe between August 2013 and October 2013.

71. Upon their return in October 2013, Complainant attempted to contact Respondent and again received the same recording that the offices were closed beginning July 22, 2013.

72. Between January 2014 and February 2014, Complainant sent Respondent several e-mails alleging that Respondent failed to perform the agreed upon legal services or take any substantive action.

73. On February 18, 2014, Complainant e-mailed Respondent stating, in pertinent part:

a. "Please note it has been ***seven*** weeks since I communicated to you and if you had not sent the letter of intent and filed the claim last year, I wanted you to return my $2000.00 back."[2]

b. "This email below sent to me in March 2013 is is (sic) just one of many where you said you would get the letter out within a week- and did not."

c. "Your delays in sending notice cost me my sick leave of 34 days and much, much more. I am willing to move on, but I am not willing to do do (sic) so without you returning the $2000.00. The email below from you is clearly stating that you were going to send the notice in mid-March, and from the time in December before this when you told me you had some health issues, until now, you have consistently told me one thing and found an excuse to not follow through."

[2] Emphasis in original.

74. On February 19, 2014, Respondent responded by acknowledging the receipt of Seven Thousand Dollars ($7,000.00) and reciting certain discussions that purportedly occurred between Respondent and others.

75. The e-mail further states, among other things, that "[i]t is important to note that your total payment to me did not come close toch (sic) the time expended even as of January 28, 2013., (sic)...I do apologize for now (sic) responding earlier, but the situation with my secretary who appears unable to carry on has been a difficult and delicate one. Again, I have no problem with sitting down and going over everything with you. .(sic)".

76. On Febuary 20, 2014, Complainant responded stating, in pertinent part, "Now, I may have used up the money for March, April, May and June...I don't know. I do know that we just spent over six weeks going back and forth trying to sort this out. So, send me a statement for time spent over the six weeks...if that time utilizes the $2000.00 then we are finished and I will not pursue this further...Now again, to be clear, **send us the itemized statement of date and time you worked on my behalf**...".[3]

77. As of the date of this report, Complainant has not received a response to the February 20, 2014 e-mail.

78. Despite repeated requests, Respondent has failed to provide Complainant an accounting for the funds paid during the representation.

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[3] Emphasis in original.

79. On March 27, 2014, the State Bar mailed Respondent an initial screening letter requesting that a response to the allegations to be provided within twenty days. The initial screening letter also informed Respondent that his failure to fully and honestly respond to, or cooperate with the investigation are grounds for discipline pursuant to Rule 54(d) and Rule 42, Ariz.R.Sup.Ct., ER 8.1(b).

80. On April 22, 2014, the State Bar mailed Respondent a second request for a response to be provided within ten days. The second letter again informed Respondent that his failure to fully and honestly respond to, or cooperate with the investigation are grounds for discipline.

81. To date, Respondent has not responded to the State Bar regarding Complainant's allegations.

82. By engaging in the misconduct described above, Respondent violated the following ethical rules:

a. Rule 42, Ariz. R. Sup. Ct., ER 1.2 – Respondent failed to abide to his client's decisions concerning the representation particularly failing to prepare and file the notice of claim or letter of intent.

b. Rule 42, Ariz. R. Sup. Ct., ER 1.3 – Respondent failed to act diligently throughout the lawsuit and his representation of his client.

c. Rule 42, Ariz. R. Sup. Ct., ER 1.4 – Respondent failed to reasonably communicate with his client regarding the status of the case or respond to inquiries by the client.

d. Rule 42, Ariz. R. Sup. Ct., ER 1.5 – Respondent charged, collected and retained unreasonable fees during the representation.

e. Rule 42, Ariz. R. Sup. Ct., ER 1.15 – Respondent failed to account for or return the unearned fees to the client.

f. Rule 42, Ariz. R. Sup. Ct., ER 1.16 – Respondent failed to properly withdraw from the representation and take the steps to the extent reasonably practicable to protect a client's interests.

g. Rule 42, Ariz. R. Sup. Ct., ER 8.1 – Respondent knowingly failed to respond to a lawful demand for information from the disciplinary authority in connection with the instant investigation.

h. Rule 42, Ariz. R. Sup. Ct., ER 8.4(c) – Respondent knowingly engaged in conduct involving dishonesty, fraud, deceit or misrepresentations.

i. Rule 54(d), Ariz. R. Sup. Ct. – Respondent refused to cooperate, furnish information or respond promptly to any inquiry or request from bar counsel relevant to the pending charges.

COUNT THREE (File No. 14-2071/Foster and Thompson)

83. Respondent was suspended from the practice of law in PDJ 2013-9068 (11-3770 and 12-2382) for a period of Two Year Suspension effective May 7, 2014 for violating Rule 42, Ariz. R. Sup. Ct., ERs 1.3, 1.4, 1.5, 1.16, 3.1, 3.2, 5.5, 8.4(c), 8.4(d) and Rule 54(c), Ariz. R. Sup. Ct. See Exhibit 1.

84. On or about June 24, 2014, Respondent signed and submitted a pleading in the State of Arizona Board of Education case of *In the Matter of Jeff S. Williamson*, C-2013-071. See Exhibit 2.

85. While the pleading contained the name and contact information for William R. Hobson, a licensed attorney, the accompanying cover letter contained the letterhead of "Law Office of Gary L. Lassen, PLC" and was signed by Ellen S. Carpenter "Legal Assistant to Gary L. Lassen". Id.

86. In addition to the letter and pleading, Respondent called Assistant Attorney General Jinju Park to discuss a possible settlement of the case.

87. On July 1, 2014, the State Bar sent an initial screening letter to Respondent by mail and e-mail at his last known address directing Respondent to respond to the State Bar no later than twenty days from the date of the letter.

88. On July 3, 2014, the State Bar sent a second screening letter to Respondent by mail and e-mail at his last known address directing Respondent to respond to the State Bar no later than July 24, 2014.

89. On August 8, 2014, the State Bar sent a third screening letter to Respondent by mail and e-mail at his last known address directing Respondent to respond to the State Bar no later than ten days from the date of the letter. The letter also explained that failure to do so would result in the State Bar including a violation for Rule 54(d).

90. To date, the State Bar has not received any response from the Respondent.

91. In July 2014, State Bar Senior Bar Counsel Steve Little contacted William R. Hobson to discuss the facts and circumstances surrounding Respondent's actions. Mr. Hobson indicated that, while he is willing to aid Respondent, he had not met the client, Jeff S. Williamson.

92. By engaging in the above listed misconduct, Respondent violated Rule 42, Ariz. R. Sup. Ct.:

a. ER 5.5 – Respondent engaged in the unauthorized practice of law while suspended.

b. ER 8.1 – Respondent knowingly failed to respond to a lawful demand for information from the disciplinary authority in connection with the instant investigation.

c. ER 8.4(c) – Respondent knowingly engaged in conduct involving dishonesty, fraud, deceit or misrepresentations by holding himself out as a licensed attorney representing Jeff S. Williamson.

93. By engaging in the above listed misconduct, Respondent also violated Rule 54(d), Ariz. R. Sup. Ct. – Respondent refused to cooperate, furnish information or respond promptly to any inquiry or request from bar counsel relevant to the pending charges.

COUNT FOUR (File No. 14-2297/Judicial Referral)

93. Respondent represented the plaintiff in the United States District Court case of *Turney v. Farmers New World Insurance Company*, CV-13-01283-PHX-SPL.[4]

94. During the representation, Respondent was suspended from the practice of law in PDJ 2013-9068 (11-3770 and 12-2382) for a period of Two Year Suspension effective May 7, 2014 for violating Rule 42, Ariz. R. Sup. Ct., ERs 1.3, 1.4, 1.5, 1.16, 3.1, 3.2, 5.5, 8.4(c), 8.4(d) and Rule 54(c), Ariz. R. Sup. Ct.

95. By and between June 27, 2014 and June 30, 2014, Respondent continued practicing law as sole attorney of record by, among other things, discussing certain discovery issues and deposition dates relevant to the lawsuit.

96. On July 7, 2014, opposing counsel discovered Respondent's suspension and questioned Respondent about his continued representation of plaintiff in the lawsuit during the suspension.

97. By letter dated July 7, 2014 and on letterhead for the Law Office of Gary L. Lassen, PLC, Respondent informed opposing counsel that plaintiff obtained substitute counsel (William Hobson and Kevin Koelbel) and that the appropriate paperwork would be filed.

98. On July 8, 2014, opposing counsel contacted the purported substituting attorneys and was informed by Koelbel he was not involved in the lawsuit. Hobson

[4] The case was originally filed in the Maricopa County Superior Court but was removed to federal court on June 26, 2013.

did not respond to any of the letters seeking clarification of his role in the lawsuit, if any.

99. On July 17, 2014, opposing counsel filed an Emergency Motion for Rule 16 Conference and Motion to Compel as there were depositions scheduled, outstanding discovery requests and the status of plaintiff's representation was uncertain.

100. On July 18, 2014, the federal judge issued an order which:

a) Granted the emergency motion and scheduled a status conference for July 25, 2014;

b) Found that Respondent was suspended but failed to notify the Court or his client;

c) Entered an order withdrawing Respondent from the action;

d) Ordered the Clerk of Court to terminate Respondent from the action;

e) Stayed all discovery and dispositive motion deadlines pending further order by the Court; and

f) Ordered the Clerk of Court to provide a copy of the July 18th order to the State Bar.

101. On August 12, 2014, the State Bar sent an initial screening letter to Respondent by mail and e-mail at his last known address directing Respondent to respond to the State Bar no later than twenty days from the date of the letter.

102. On September 11, 2014, the State Bar sent a second screening letter to Respondent by mail and e-mail at his last known address directing Respondent to respond to the State Bar within ten days. The letter also explained that failure to do so would result in the State Bar including a violation for Rule 54(d).

103. To date, the State Bar has not received any response from the Respondent regarding this matter.

104. On September 23, 2014, the Supreme Court of Arizona reduced the sanction in PDJ 2013-9068 to an Eighteen Month Suspension for violations of Rule 42, Ariz. R. Sup. Ct., ERs 1.4(a)(3), 1.4(a)(4), 1.16 5.5, 8.4(c) and Rule 54(c), Ariz. R. Sup. Ct.

105. By engaging in the misconduct listed above, Respondent violated Rule 42, Ariz. R. Sup. Ct.:

a. ER 1.3 – Respondent failed to diligently inform his client and the Court that he was suspended from the practice of law.
b. ER 1.4 - Respondent failed to inform the Court or his client that he was suspended from the practice of law.
c. ER 1.16(d) – Respondent failed to take the steps necessary to protect his client's rights when his representation was terminated.
d. ER 5.5 – Respondent engaged in the unauthorized practice of law during his suspension period.

e. ER 8.4(d) – Respondent engaged in conduct which was prejudicial to the administration of justice.

106. By engaging in the misconduct listed above, Respondent also violated Rule 54(d), Ariz. R. Sup. Ct. – Respondent refused to cooperate, furnish information or respond promptly to any inquiry or request from bar counsel relevant to the pending charges.

107. By engaging in the misconduct listed above, Respondent also violated Rule 72, Ariz. R. Sup. Ct. – Respondent failed to properly notify the Court and his client that he was suspended from the practice of law.

DATED this _____ day of December, 2014.

STATE BAR OF ARIZONA

_____
Craig D. Henley
Senior Bar Counsel

Original filed with the Disciplinary Clerk of
the Office of the Presiding Disciplinary Judge
of the Supreme Court of Arizona
this _____ day of December, 2014.

by:_____
CDH/ rtb

EXHIBIT 1

IN THE
SUPREME COURT OF THE STATE OF ARIZONA
BEFORE THE OFFICE OF THE PRESIDING DISCIPLINARY JUDGE
1501 W. WASHINGTON, SUITE 102, PHOENIX, AZ 85007-3231

IN THE MATTER OF A MEMBER OF THE STATE BAR OF ARIZONA, **GARY L. LASSEN,** **Bar No. 005259** Respondent.	**PDJ-2013-9068** [State Bar File Nos. 11-3770, 12-2382] **FINAL JUDGMENT AND ORDER** **FILED MARCH 13, 2014**

This matter having come on for hearing before the Hearing Panel of the Supreme Court of Arizona, it having duly rendered its decision; a Notice of Appeal having been filed and an Order Denying Motion for Stay, But Extending Commencement of Suspension having been filed on March 7, 2014, accordingly,

IT IS HEREBY ORDERED that Respondent, **GARY L. LASSEN,** is suspended from the practice of law for a period of two years effective **May 7, 2014,** for conduct in violation of his duties and obligations as a lawyer, as disclosed in the Hearing Panel's Report.

IT IS FURTHER ORDERED that Mr. Lassen shall immediately comply with the requirements relating to notification of clients and others, and provide and/or file all notices and affidavits required by Rule 72, Ariz. R. Sup. Ct.

IT IS FURTHER ORDERED that Mr. Lassen shall pay restitution in the following amounts to the following individuals:

Restitution

Julia Hutton and/or Orca Communications Unlimited, LLC	$9,044.04
Earl and Martha Washington	$1,000.00

IT IS FURTHER ORDERED that upon reinstatement, Mr. Lassen shall be placed on probation for a period of two (2) years with the State Bar Law Office Management Assistance Program. Specific terms and conditions of probation shall be determined at the time of reinstatement.

IT IS FURTHER ORDERED that Mr. Lassen shall obtain a Member Assistance Program assessment prior to filing any application for reinstatement.

IT IS FURTHER ORDERED that Mr. Lassen pay those costs and expenses awarded to the State Bar of Arizona in the amount of $2,028.66. There are no costs or expenses incurred by the disciplinary clerk and/or Presiding Disciplinary Judge's Office in connection with these disciplinary proceedings.

DATED this 13th day of March, 2014.

William J. O'Neil

The Honorable William J. O'Neil
Presiding Disciplinary Judge

Original filed with the Disciplinary Clerk
this 13th day of March, 2013.

COPY of the foregoing e-mailed/mailed
this 13th day of March, 2013, to:

Craig D. Henley
State Bar of Arizona
4201 N. 24th Street, Suite 100
Phoenix, AZ 85016-6266
Email: lro@staff.azbar.org

Gary L. Lassen
Law Office of Gary Lassen, PLLC
1234 S. Power Road, Suite 254
Mesa, AZ 85206-3761
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Sandra Montoya
Lawyer Regulation Records Manager
State Bar of Arizona
4201 North 24th Street, Suite 100
Phoenix, Arizona 85016-6288

by: MSmith

SUPREME COURT OF ARIZONA

In the Matter of a Member of the State Bar of Arizona	Arizona Supreme Court No. SB-14-0012-AP
GARY L. LASSEN, Attorney No. 5259	Office of the Presiding Disciplinary Judge No. PDJ20139068
Respondent.	
	FILED 9/23/2014

DECISION ORDER

Pursuant to Rule 59, Rules of the Supreme Court, Respondent Gary L. Lassen appealed the hearing panel's findings and imposition of a two year suspension. The Court has considered the parties' briefs and the record in this manner. With respect to Count One, the Court accepts the panel's determination that Lassen violated ERs 1.4(a)(3) and (4) and 1.16(d). We reject the panel's determination that Lassen violated ERs 1.3, 1.5, 3.1, and 8.4(d). We also reject the finding that he violated ER 1.16 by giving the client "little time to retain new counsel and file her appeal."

With respect to Count Two, the Court accepts that panel's determination that Lassen violated ERs 5.5 and 8.4(c), and Rule 54(c). We reject the panel's determination that Lassen violated ERs 1.3, 1.4(a)(3) and (4), 1.5, 1.16, and 3.2.

With respect to the sanction, the Court finds that a suspension of eighteen months is sufficient to satisfy the purposes of lawyer discipline. The Court accepts the orders of restitution and the imposition of costs and expenses.

IT IS ORDERED affirming the panel's determinations as set forth in this order and modifying the sanction to reflect an eighteen (18) month suspension.

DATED this 23rd day of September, 2014.

SCOTT BALES
Chief Justice

TO:
Gary L Lassen
Craig D Henley
Jennifer Albright
Sandra Montoya
Maret Vessella
Don Lewis
Beth Stephenson
Mary Pieper
Netz Tuvera
Lexis Nexis

EXHIBIT 2

LAW OFFICE OF GARY L. LASSEN, PLC
1234 S. POWER ROAD, SUITE 254, MESA, ARIZONA 85206 • PHONE: 480.656.0975 • FAX: 480.656.4528 • EMAIL: gary@gllplc.com

June 24, 2014

Christine M. Thompson, Esquire
Executive Director
State Board of Education
1535 West Jefferson Street
Phoenix, Arizona 85007

Re: In the Matter of: Jeff S. Williamson
Holder of Arizona Education Certificate(s)
Educator Id. No.: 400-9391
Arizona Board of Education Case No.: C-2013-071

Dear Ms. Thompson:

Enclosed please find Respondent's Answer to Complaint and executed Verification of Jeff S. Williamson for filing on behalf of Jeff S. Williamson relative to the above matter. Please process accordingly.

Sincerely,

LAW OFFICE OF GARY L. LASSEN, PLC

Ellen S. Carpenter
Legal Assistant to Gary L. Lassen

esc
Enclosure
Cc/enc: Jeff S. Williamson
Jinju Park, Esquire

William R. Hobson (006887)
Law Offices of William R. Hobson, PC
7303 W. Boston Street
Chandler, Arizona 85226
80.705.7550
(FAX) 480.705.7503
bill@billhobsonlaw.com
Attorney for Plaintiff

STATE OF ARIZONA
BOARD OF EDUCATION

In the Matter of: Jeff S. Williamson, Holder of Arizona Education Certificate(s) Educator Identification No.: 400-9391, Respondent.	Case No.: C-2013-071 **RESPONDENT'S ANSWER TO COMPLAINT**

In answer to the Complaint filed as referenced-above, Jeff S. Williamson, Respondent, answers as follows:

1. Jeff S. Williamson, admits I – Jurisdiction, paragraph 1.

2. Respondent, admits II – Parties, paragraphs 1 and 2.

3. Respondent, admits III – Factual Allegations, paragraphs 1 and 2.

4. Respondent is without information sufficient to form a belief as the truth of the allegation upon which to form a belief in III – Factual Allegations, paragraphs 3 and 4, and therefore, denies same and demands strict proof thereof.

5. Respondent denies III – Factual Allegations, paragraph 5.

6. Respondent admits IV – Legal Authority, paragraphs 1, 2 and 3.

7. In answer to V – Allegations of Unprofessional Conduct, Respondent denies paragraphs 1 and 2.

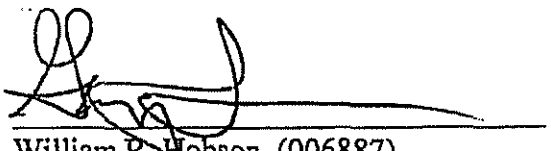
8. Respondent affirmatively alleges that he never retained, paid for, or in any way asked an on-line service to request a false or untrue reference.

9. Jeff S. Williamson affirmatively alleges that he was the victim of a "pop-up" scam that appeared on his computer while filling out the Deer Valley application on-line.

10. Respondent never engaged or paid for any service and thus, is not guilty of any unprofessional conduct and is indeed a victim of an attempted identity fraud or some other scam associated with computer fraud.

WHEREFORE, Respondent having fully answered the Complaint, Jeff S. Williamson affirmatively requests that the Complaint be dismissed in its entirety.

RESPECTFULLY SUBMITTED this 24th day of June, 2014.

By: 

William R. Hobson (006887)
Law Offices of William R. Hobson, PC
7303 W. Boston Street
Chandler, Arizona 85226
Attorney for Plaintiff

The ORIGINAL of Respondent's Answer to Complaint was filed by mailed with first class postage via the U.S. Postal Service on this 24th day of June, 2014, to:

Christine M. Thompson
Executive Director
State Board of Education
1535 West Jefferson Street
Phoenix, Arizona 85007
Complainant

A COPY was mailed this same day to:

Thomas C. Horne (14000)
Attorney General
Jinju Park (026023)
Assistant Attorney General
Education and Health Section
1275 West Washington Street
Phoenix, Arizona 85007
EducationHealth@azag.gov

By: /s/ Ellen S. Carpenter
Ellen S. Carpenter

VERIFICATION OF JEFF S. WILLIAMSON

Jeff S. Williamson, Respondent in the above-entitled matter, hereby verifies Respondent's Answer to Complaint are true and correct to the best of his knowledge, information and belief.

DATED this 24th day of June, 2014.

Jeff S. Williamson

EXHIBIT B

BEFORE THE ATTORNEY DISCIPLINE PROBABLE CAUSE COMMITTEE OF THE SUPREME COURT OF ARIZONA

IN THE MATTER OF A DISBARRED MEMBER OF THE STATE BAR OF ARIZONA,

GARY L. LASSEN,
Bar No. 005259,

Respondent.

No. 14-2071

PROBABLE CAUSE ORDER

The Attorney Discipline Probable Cause Committee of the Supreme Court of Arizona ("Committee") reviewed this matter on October 10, 2014, pursuant to Rules 50 and 55, Ariz. R. Sup. Ct., for consideration of the State Bar's Report of Investigation and Recommendation.

By a vote of 9-0-0, the Committee finds probable cause exists to file a complaint against Respondent in File No. 14-2071.

IT IS THEREFORE ORDERED pursuant to Rules 55(c) and 58(a), Ariz. R. Sup. Ct., authorizing the State Bar Counsel to prepare and file a complaint with the Disciplinary Clerk.

Parties may not file motions for reconsideration of this Order.

DATED this 20 day of October, 2014.

Lawrence F. Winthrop

Judge Lawrence F. Winthrop, Chair
Attorney Discipline Probable Cause
Committee of the Supreme Court of Arizona

Original filed this 20th day
of October, 2014, with:

Lawyer Regulation Records Manager
State Bar of Arizona
4201 North 24th Street, Suite 100
Phoenix, Arizona 85016-6266

Copy mailed this 22nd day
of October, 2014, to:

Gary L. Lassen
1234 South Power Road, Suite 254
Mesa, Arizona 85206-3761
Respondent

Copy emailed this 22nd day
of October, 2014, to:

Attorney Discipline Probable Cause Committee
of the Supreme Court of Arizona
1501 West Washington Street, Suite 104
Phoenix, Arizona 85007
E-mail: ProbableCauseComm@courts.az.gov

Lawyer Regulation Records Manager
State Bar of Arizona
4201 North 24th Street, Suite 100
Phoenix, Arizona 85016-6266

by: Rodney T. Bruce

BEFORE THE ATTORNEY DISCIPLINE PROBABLE CAUSE COMMITTEE OF THE SUPREME COURT OF ARIZONA

IN THE MATTER OF A DISBARRED MEMBER OF THE STATE BAR OF ARIZONA, **GARY L. LASSEN** **Bar No. 005259** Respondent.	No. 14-2297 **PROBABLE CAUSE ORDER**

The Attorney Discipline Probable Cause Committee of the Supreme Court of Arizona ("Committee") reviewed this matter on December 12, 2014, pursuant to Rules 50 and 55, Ariz. R. Sup. Ct., for consideration of the State Bar's Report of Investigation and Recommendation.

By a vote of 9-0-0, the Committee finds probable cause exists to file a complaint against Respondent in File No. 14-2297.

IT IS THEREFORE ORDERED pursuant to Rules 55(c) and 58(a), Ariz. R. Sup. Ct., authorizing the State Bar Counsel to prepare and file a complaint with the Disciplinary Clerk.

Parties may not file motions for reconsideration of this Order.

DATED this 22 day of December, 2014.

Lawrence F. Winthrop

Judge Lawrence F. Winthrop, Chair
Attorney Discipline Probable Cause
Committee of the Supreme Court of Arizona

Original filed this 22nd day
of December, 2014, with:

Lawyer Regulation Records Manager
State Bar of Arizona
4201 North 24th Street, Suite 100
Phoenix, Arizona 85016-6266

Copy mailed this 23rd day
of December, 2014, to:

Gary L. Lassen
1234 South Power Road,
Suite 254
Mesa, Arizona 85206-3761
Respondent

Copy emailed this 23rd day
of December, 2014, to:

Attorney Discipline Probable Cause Committee
of the Supreme Court of Arizona
1501 West Washington Street, Suite 104
Phoenix, Arizona 85007
E-mail: ProbableCauseComm@courts.az.gov

Lawyer Regulation Records Manager
State Bar of Arizona
4201 North 24th Street, Suite 100
Phoenix, Arizona 85016-6266

by: Rodney T. Bass

IN THE
SUPREME COURT OF THE STATE OF ARIZONA
BEFORE THE OFFICE OF THE PRESIDING DISCIPLINARY JUDGE
1501 W. WASHINGTON, SUITE 102, PHOENIX, AZ 85007-3231

IN THE MATTER OF A DISBARRED MEMBER OF THE STATE BAR OF ARIZONA, **GARY L. LASSEN,** **Bar No. 005259** Respondent.	**No. PDJ-2014-9082** **ORDER GRANTING MOTION TO AMEND COMPLAINT AND CONTINUING HEARING DATE** [State Bar Nos. 14-0401 & 14-0784] **FILED JANUARY 5, 2015**

The Presiding Disciplinary Judge (PDJ) held a final case management conference on January 5, 2015. Senior Bar Counsel, Craig D. Henley, appeared on behalf of the State Bar of Arizona. Gary L. Lassen appeared *pro per.* Mr. Lassen is strongly encouraged to retain counsel. The complaint was filed on September 22, 2014. The answer was filed October 15, 2014. The hearing is set for January 12-13, 2015. A Motion for Telephonic Appearance and Testimony by certain witnesses was filed by the State Bar and opposed by Mr. Lassen.

A Motion to Amend Complaint was thereafter filed by the State Bar. Mr. Lassen responded with a lack of opposition to that amendment as he prefers all matters be concluded in one hearing. Both parties believe it is advantageous to return to the same settlement judge for further effort to resolve this matter. The parties are directed to immediately contact and schedule a further settlement conference and Notice the Disciplinary Clerk once such settlement conference has been scheduled. The motion to amend is granted and the motion for telephonic appearance and testimony is now moot.

The hearing is reset within the 150 days as required by rule. The parties are hopeful the matter may settle. However, one or both parties may need additional time if it does not. Either party may request a continuance for stated grounds if the

Exhibit
6

settlement conference does not resolve this matter. Mr. Lassen is reminded he must formally file an answer to the amended complaint. However, that answer need only address the additional counts under the amended complaint. That complaint is deemed filed and served this date.

Accordingly:

IT IS ORDERED granting the motion to amend the complaint.

IT IS FURTHER ORDERED, resetting the hearing for February 19-20, 2015.

DATED this 5th day of January, 2015.

William J. O'Neil

William J. O'Neil, Presiding Disciplinary Judge

COPY of the foregoing e-mailed/mailed
this 5th day of January, 2015, to:

Craig D. Henley
State Bar of Arizona
4201 N. 24th Street, Suite 100
Phoenix, AZ 85016-6266
Email: lro@staff.azbar.org

Gary Lassen
1234 South Power Road, Suite 254
Mesa, AZ 85206-3761
Email: gary@gllplc.com
Respondent

by: JAlbright

BEFORE THE PRESIDING DISCIPLINARY JUDGE

IN THE MATTER OF A DISBARRED MEMBER OF THE STATE BAR OF ARIZONA,

GARY L. LASSEN,
Bar No. 005259

Respondent.

No. 2014-9082

DECISION AND ORDER IMPOSING SANCTIONS

[State Bar Nos. 14-0401, 14-0784, 14-2071, and 14-2297]

FILED MAY 18, 2015

On March 16 and 17, 2015, the Hearing Panel ("Panel"), composed of Anne B. Donahoe, a public member, Harlan J. Crossman, an attorney member, and the Presiding Disciplinary Judge, William J. O'Neil ("PDJ"), held a two day hearing pursuant to Rule 58(j), Ariz. R. Sup. Ct. Craig Henley appeared on behalf of the State Bar of Arizona ("State Bar"). Mr. Lassen appeared pro per. The Panel carefully considered the Complaint, Answer, Amended Joint Pre-Hearing Statement, and admitted exhibits.[1] The Panel now issues the following "Decision and Order Imposing Sanctions," pursuant to Rule 58(k), Ariz. R. Sup. Ct.

I. SANCTION IMPOSED:
DISBARMENT AND COSTS OF THESE DISCIPLINARY PROCEEDINGS

II. BACKGROUND AND PROCEDURAL HISTORY

Probable Cause Orders were filed on June 12, 2014 and the State Bar filed its 82 paragraph Complaint on September 22, 2014, containing two (2) counts alleging

[1] Consideration was also given to sworn testimony of Susan Bejarano, Jinju Park, Gregory Riccio, and William Hobson.

Exhibit 7

violations of twelve (12) different Ethical Rules (ERs): 1.2 (failure to abide to client's decisions), 1.3 (diligence), 1.4 (communication), 1.5 (unreasonable fees), 1.15 (safekeeping property), 1.16 (failure to withdraw representation) 3.2 (failure to make reasonable efforts to expedite litigation), 8.1 (failure to respond to lawful demand for information from the disciplinary authority), 8.2(a) (reckless statements), 8.4(c) (conduct involving dishonesty, fraud, deceit, or misrepresentations) and (d) (conduct prejudicial to the administration of justice), Rule 54(d) (refusal to cooperate with bar counsel), and Rule 72 (failure to notify court of suspension).

Mr. Lassen filed his Answer on October 15, 2014. Mr. Lassen admitted paragraphs 1-8, 11 and 17 of the Complaint. He denied paragraphs 9-10, 12-16, 45, and 57-82. Mr. Lassen did not deny the other allegations. Civil Rule 8(d) is incorporated into disciplinary proceedings by Supreme Court Rule 48(b). Civil Rule 8(d) states:

> Averments in a pleading to which a responsive pleading is required, other than those as to the amount of damage are admitted when not denied in the responsive pleading.

Paragraphs 18-44 and 46-56 not having been denied are admitted by Mr. Lassen.

An initial case management conference was held on October 27, 2014. Mr. Lassen filed a motion to Dismiss Counts One and Two on October 15, 2014. The PDJ filed an Order Denying Motion to Dismiss on December 10, 2014. The parties filed their Joint Pre-Hearing Statement on December 22, 2014.

The State Bar filed a motion to amend the complaint on December 24, 2014. Mr. Lassen joined the motion in his Response to Motion to Amend Complaint filed January 5, 2015, adding proposed paragraphs 83-105. The PDJ filed an Order Granting Motion to Amend Complaint and Continue Hearing Date on January 5, 2015.

Mr. Lassen's supplemental answer was filed January 12, 2015. He admitted paragraphs 83, 93 and 100 and denied all other paragraphs. Subsequently, Mr. Lassen filed a Motion for Continuance of Hearing and the State Bar filed a response to the motion indicating no opposition. The PDJ filed an Order Granting Motion to Continue and Setting New Hearing Dates on February 6, 2014. An Amended Join Pre-Hearing Statement was filed on February 26, 2015.

The State Bar asserts disbarment is the appropriate sanction in this matter for Mr. Lassen's failure to abide to his client's decisions; lack of diligence; failure to reasonably communicate with his clients; charging of unreasonable fees to his clients; failure to account for and return unearned fees to his clients; failure to properly withdraw from his representation; failure to make reasonable efforts to expedite litigation to the extent reasonably practicable to protect a client's interests; failure to respond to lawful demand for information from the disciplinary authority; making reckless statements concerning the qualifications or integrity of a judge; conduct involving dishonesty, fraud, deceit, or misrepresentation; conduct prejudicial to the administration of justice; engagement in the unauthorized practice of law while suspended; failure to inform client and the court that he was suspended from the practice of law; failure to take the steps necessary to protect his client's rights when his representation was terminated; refusal to cooperate with bar counsel; and his failure to notify the court of his suspension.

FINDINGS OF FACT

Mr. Lassen was licensed to the practice of law in the State of Arizona on April 22, 1978. [Amend. Jt. Pre-Hrg. Stmnt, p. 2.]

Count One (File No. 14-0401/Bejarano)

In July 2006, Susan Bejarano ("Complainant" under this count) signed a one-year contract with Roosevelt Elementary School District No. 66 of Maricopa County ("RSD") as the Assistant Superintendent of Teaching and Learning. [Amend. Jt. Prehrg. Stmnt. ¶ 8; Complaint admitted ¶ 8.] Shortly thereafter, a school employee filed a complaint against Complainant. [Amend. Jt. Prehrg. Stmnt. ¶ 9; Complaint admitted ¶ 11.] In November 2007, Complainant filed a complaint with the Attorney General's Office alleging that the Board violated the Open Meetings Law when they heard issues related to her investigation in Executive Session on November 1, 2007. [SB Ex. 17, Bates SBA000189-91.]

In the 2006-2007 school year, Complainant met Mr. Lassen. She was referred to him by a mutual friend. She was having issues in the school district where she worked and wanted legal representation. [Testimony of Bejarano, 9:42:56.] She contacted Mr. Lassen and talked to him about legally representing her. [Testimony of Bejarano, 9:43:05.] Ms. Bejarano was a school administrator and after thirty years of employment, of which the last two were in an administrative position, she was having an employment dispute with the school district. She expected Mr. Lassen to represent her and protect her legal rights. She decided to have him represent her. We find Mr. Lassen agreed to represent her *pro bono* and began advising her prior to the 2007-2008 school year. [Testimony of Bejarano, 9:43:57.]

Around January 2008, Complainant was placed on administrative leave and was informed that her contract would not be renewed. [SB Ex. 17, SBA000121; Testimony of Bejarano.] Within a month Mr. Lassen presented her with a contract which she didn't sign because it was very confusing to her and there is no evidence he explained it to her. We find Mr. Lassen instead told her a contract was not needed and he

would take a partial percentage of any monetary award she received on a contingency basis. [Testimony of Bejarano, 9:44:38.] Mr. Lassen intentionally violated E.R. 1.5(b) and soon disregarded that rule again. We find from the evidence received in the hearing, Mr. Lassen believed her case had a value of at least $900,000. As a result of Mr. Lassen's valuation, Complainant offered to settle for that amount at a later settlement conference. [Testimony of Bejarano, 9:49:45.]

Later, Mr. Lassen told Complainant he needed payment for couriers and transcriptions. Not long after, he informed her he was having a cash flow problem and requested regular lump sum payments, but we find no written communication to Complainant of what the basis was for such lump sum payments. We find nothing in the record that Mr. Lassen provided her with any confirmatory writing regarding the representation and find there was no written fee agreement between the parties. [Testimony of Bejarano, 9:45:00; SB Ex. 2, Bates, SBA00048.] We find Mr. Lassen knew he was required under ER 1.5 to communicate in writing what the rate of his fee and expenses for which Complainant would be responsible was, but intentionally failed to. We are disinclined to presume this was mere negligence.

We recognize there is an email from Mr. Lassen to Complainant on April 10, 2010, stating "As we discussed, IU will agree to handle the appeal for a flat fee of ten thousand dollars plus five thousand dollars to cover costs." [SB Ex. 2, SBA000052.] We also note Complainant paid $10,500 within weeks. [Id. at SBA000089-90.] We are satisfied that writing, although unsigned, is sufficient in light of her payment. Mr. Lassen acknowledged in both his testimony and written closing argument, he told Complainant he would assist her "without fee in non-litigation efforts." He also agreed to handle the Petition for Review with the Supreme Court on

a "costs-only basis." [Testimony of Lassen; Respondent's Closing Argument, p. 2, lines 10-17.]

We find it clear Complainant believed Mr. Lassen was handling the litigation on a "contingency" basis. In an email complaining to Mr. Lassen of his non-responsiveness, she suggested such a fee arrangement was resulting in his unwillingness to respond to her. Complainant stated unequivocally, "...you have taken it on contingency." [SB Ex. 2, SBA000016.] Mr. Lassen offered no writing disputing the email or testimony of Complainant that Mr. Lassen was representing her on a contingency fee basis. Mr. Lassen offered no testimony or exhibits regarding any written agreement between them. A written statement concerning the terms of engagement would have removed the possibility of misunderstanding. Rule 42, E.R. 1.5, footnote 3, Ariz. R. Sup. Ct. We find Mr. Lassen did not contradict this statement of his client during the time of the underlying case, because that was their unwritten agreement.

As stated above, we find Mr. Lassen violated E.R. 1.5. The contingent fee agreement was required to be in writing with its terms detailed. See E.R. 1.5(c). Even if the agreement had been an hourly fee agreement, Mr. Lassen intentionally violated his duty to communicate to his client in writing "the scope of the representation and the basis or rate of the fee and expenses for which the client will be responsible." *See* E.R. 1.5(a).

During the hearing, Mr. Lassen asserted there was a change in the agreement. We find nothing to support his assertion. Even if there had been a change in the basis or rate of the fee, Mr. Lassen intentionally violated his duty to communicate that change in writing to his client as required by E.R. 1.5(b).

We agree with the State Bar that such an intentional violation makes the fee inherently unreasonable, especially under the facts of this charge. Complainant advanced monies to Mr. Lassen well in excess of the costs incurred in the litigation. From the evidence it is apparent to us Mr. Lassen underestimated the time the litigation would require. He complained to Complainant of the litigation tactics of opposing counsel, Georgia Staton, as a "scorched earth policy." [SB Ex. 2, SBA000049.] It is also apparent Mr. Lassen began to have financial issues. Mr. Lassen wrote Complainant on October 7, 2009, asking her,

> ...to continue the $5000 payments for a couple of months. I am experiencing a cash flow crunch that should subside in a month or so, but bringing Michael on full time has affected my cash flow in the short term. Thanks.

[SB Ex. 2, SBA000042.]

Faced with such a continuing "cash flow crunch" it the evidence shows Mr. Lassen chose to do what is expressly forbidden by Comment 5 to E.R. 1.5. As a result, Complainant was left in the untenable position of being forced into accepting this "bargain" of Mr. Lassen. Obviously, this practice violated E.R. 1.5(c). *See In re Struthers,* 179 Ariz. 216, 222, 877 P.2d 789, 795 (1994).

We decline to find Mr. Lassen violated E.R. 1.15. It is undisputed Complainant paid Mr. Lassen $46,149.00, which was well in advance of the costs incurred in the litigation. It is unclear to us what the arrangements were for such payments. We find the evidence clear and convincing that the agreement was on a contingency. It is not clear what the terms were for these advance payments. Regardless, the agreement was improper. However, we find the State Bar has failed in its burden of proof. Although it was an improper fee under E.R. 1.5, it appears the terms of the agreement were to improperly aid Mr. Lassen in his "cash flow" problems. We decline

as a result to find he had a duty to keep such payments "separate" from the lawyer's own property.

On April 10, 2008, the Board voted against renewing Complainant's contract and later paid the balance remaining on the contract. [Complaint admitted ¶ 17.] Complainant notified Mr. Lassen of "support issues" she wanted him to assist in resolving quickly, including, but not limited to, the School District's payment for vacation and sick time. Complainant believed her sick days had a value of approximately $10,000. [Testimony of Bejarano; SBA Ex. 2, SBA000028.] Mr. Lassen also believed the value of her sick days was $10,000. In discussing a later appeal in this matter, Mr. Lassen wrote to Complainant stating their agreement for his handling of her appeal to be $10,000. Mr. Lassen wrote, "[I] will attempt to recoup your unpaid leave to get you reimbursed." [SB Ex. 2, SBA 000052.]

On May 15, 2008, Complainant gave Mr. Lassen a directive to address the "sick days/vacation." The following day she provided Mr. Lassen with a copy of the District policy for the sick days, which "states a 15 day prior notification." She received no response. On June 4, 2008, she asked again if there was any information regarding this issue, but received no response. [SB Ex. 2, Bates SBA000013-15; Testimony of Bejarano, 9:46:13.]

On Monday, July 28, 2008, Complainant wrote Mr. Lassen an e-mail "venting" about delays in the case and Mr. Lassen's failure to follow her directive to address the issues regarding her vacation and sick leave pay-out. In the same e-mail, Complainant requested a meeting to determine whether Mr. Lassen was too busy to handle her "contingency" case. [SB Ex. 2, SBA000016-17.] On the same day, Mr. Lassen responded to Complainant claiming he had prepared a detailed complaint but

needed to make some revisions before sending it to Complainant to review. He made no mention of her requests regarding sick day reimbursement. [Id. at SBA000016.]

Mr. Lassen filed the complaint on July 31, 2008 against RSD and RSD related board members. At the time of filing Mr. Lassen knew Complainant was seeking pay for unused leave and sick days she was not paid for, yet he did not include that in the damages sought. If Mr. Lassen had reasons for never taking any demonstrable action toward resolving that issue, the record does not contain any evidence he discussed such a decision with his client. [SB Ex. 6.]

Despite the recent emails of Ms. Bejarano, Mr. Lassen wrote to counsel for RSD on August 1, 2008, without any mention of her vacation and sick leave claim. The letter from Mr. Lassen consists of two sentences: "Ms. Bejarano informs me that she needs to obtain her personal belongings at the District and also has yet to receive her longevity pay relating to her 30 years of tenure in the District. Can you contact me so that a time can be set up to arrange that?" We find no evidence the letter was not copied to his client. [Lassen Ex. 1A, Bates 000418.]

The Human Resource Department of RSD sent Complainant a check for her unused vacation time with an itemization dated September 4, 2008. [SB Ex. 2, Bates SBA000019.] Complainant emailed that document to Mr. Lassen on September 10, 2008, informing him "I am still owed for my sick days." [Id. at Bates SBA000018.] Mr. Lassen did not respond. More than nine weeks later, having received no response from Mr. Lassen, Complainant again emailed him on November 15, 2008, reminding Mr. Lassen "The district hasn't paid me my sick days and there's a policy that states all wages must be paid within 2 weeks." She again attached the District policy. [Id.

at Bates SBA000019.] On that same day, Mr. Lassen finally responded with one sentence: "Let's make demand." [SB Ex. 2, Bates SBA000023.]

Four months later, Mr. Lassen had still done nothing regarding this issue. Ms. Bejarano wrote his legal assistant on March 18, 2009, stating, she "talked to Gary" about the district "not paying my SICK DAYS, to see if this could be requested. I believe it's about $10G." [Id. at Bates SBA000028.] Despite speaking to Mr. Lassen and writing his legal assistant to remind him of this, Mr. Lassen still failed to abide by the decision of Complainant concerning this objective and took no action. We further find Mr. Lassen never provided Complainant with documentation of his efforts, if any, to address the sick days, or the vacation days for that matter. [Testimony of Bejarano, 9:54:58.]

In his closing argument, Mr. Lassen asserted, "The allegations in the complaint failed to apprise Respondent of the specific instances in which he failed to communicate with Ms. Bejarano." We reviewed the complaint at his urging. We find his assertions untruthful. Paragraphs 18-21 of the complaint, identify these specific instances by dates and emails. In his answer to the complaint, Mr. Lassen did not deny any of those allegations.

In his written closing argument to the Panel, Mr. Lassen states,

> Bar Counsel claims Respondent did not address sick leave payment. This is untrue, and it became part of the claim later in the lawsuit and became subject matter of discovery and Bejarano's deposition.

[Respondent's Closing Argument, p. 6, lines 11-14; SB Ex. 6.]

We also reviewed the complaint regarding this assertion and find nothing in the complaint or in the appeal which addressed this issue.

If the discovery Mr. Lassen refers to in his closing argument is existent, he failed to offer it or point us to whatever discovery he refers to. We were not provided the deposition of Ms. Bejarano. However, even if it was a "subject matter" of her deposition, we fail to see how his questioning of her in a deposition matters in light of his failure to properly make the claim.

The record does not support his arguments and instead presents a rationalization of conduct far more demonstrating a complete lack of remorse. We find the record clear, Mr. Lassen knew Complainant had a claim and was provided with the written District policy supporting that claim on multiple occasions. He was directed to pursue that claim by his client. He instead repeatedly ignored her and never abided by that directive.

We find the April 20, 2010, email of Mr. Lassen to Complainant to be an unapologetic acknowledgment of his failure to assert this claim. Nearly two years after Complainant had directed him to address the sick days issue and after having the trial court entered judgment denying her other claims, Mr. Lassen sought permission to file an appeal and stated, "I will attempt to recover your unpaid sick leave to get you reimbursed. [SB Ex. 2, SBA000052.]

We find Mr. Lassen violated ER 1.2 regarding this support issue of sick days in this charge. He knew of the objective of his client and was repeatedly told of it. He did not consult with her as to the means by which it was to be pursued and instead ignored it repeatedly and failed to abide by her decision.

We find Mr. Lassen violated ER 1.3. Mr. Lassen not only failed to act with reasonable diligence and promptness in representing Complainant on this issue; he failed to act at all. He also violated ER 1.4 as he repeatedly failed to reasonably

consult with Complainant about the means by which her objective was to be accomplished. Mr. Lassen did not keep Complainant informed at all about the status of this issue and did not comply with her reasonable requests for information regarding the support issue.

We also find Mr. Lassen violated E.R. 3.2. We find Mr. Lassen made no reasonable efforts to expedite this part of the litigation consistent with the clear and multiple directives of his client. As stated in the Comment to E.R. 3.2, "Dilatory practices bring the administration of justice into disrepute." We find Mr. Lassen's action far worse than "dilatory practices" regarding this issue.

As demonstrated above, Complainant sent numerous e-mails to Mr. Lassen in the course of the representation, but Complainant would go weeks at a time without hearing from him. [SB Ex. 2.] Complainant's e-mails were cc'ed to his secretary because she had concerns Mr. Lassen wasn't responding in a timely manner. [Testimony of Bejarano, 9:49:39.] For the first four months of 2009, virtually all communications to Complainant came from his legal assistant. [SB Ex. 2, SBA000025-31.] Typically, the only way Ms. Bejarano received communication from Mr. Lassen's office was if she initiated contact with the office throughout the representation. [Bejarano Testimony, 10:02:40 and 10:03:40.]

Often when Mr. Lassen did respond, his answers were virtually non-responsive. By example, on April 9, 2009, not having heard directly from Mr. Lassen for months, Complainant sent Mr. Lassen an email stating, "I hope you're doing well. I know it's been really busy in the office but, am wondering if I can get an update or status of my case. If I don't speak to you, have a wonderful Easter." Mr. Lassen answered, "I need to interview witnesses." [SB Ex. 2, SBA000031.]

In October 2008, Complainant submitted interrogatory responses to Mr. Lassen. [Amend. Jt. Prhrg. Stmnt., ¶ 17; Complaint admitted ¶¶ 24-25; SB Ex. 2, Bates SBA00020-22; see also Bejarano Testimony, 9:56:17.] In November 12, 2008, Complainant e-mailed Mr. Lassen complaining that the interrogatory responses contained grammatical errors and also alleging they were altered without Complainant's knowledge or consent. Complainant testified the interrogatories were missing information she provided. [Amend. Jt. Prhrg. Stmnt., ¶ 18; Complaint admitted ¶ 26; SB Ex. 2, Bates SBA00020-22; see also Bejarano Testimony, 10:00:24.]

We find the State Bar failed in its burden of proof to demonstrate regarding the interrogatory responses, Mr. Lassen violated E.R. 8.4(c) or (d) in relation to these discovery issues. It is not clear to us whether the answers submitted contained the corrected information of Complainant or if not, that those answers involved his knowingly engaging in conduct involving dishonesty, fraud, deceit or misrepresentations regarding these interrogatories or that the answers were prejudicial to the administration of justice.

On June 5, 2009, the parties requested Scott & Skelly, L.L.C. serve as a mediator for the lawsuit with an agreement that each of the lawyers and clients share joint responsibility for their respective pro-rata portion of the mediation fees. [Complaint admitted ¶ 28; SB Ex. 25, Bates SBA000224.]

On August 25, 2009, the parties participated in a brief mediation with Scott & Skelly, LLC. The first of several monthly bills were mailed to Mr. Lassen on August 26, 2009, in the amount of one thousand thirty-five ($1,035.00) dollars, for a pro-rata share of the total mediation fees. [Amend. Jt. Prhrg. Stmnt. ¶ 21; Complaint ¶

30; SB Ex. 25, Bates SBA000226-235. Mr. Lassen told Complainant $1,000 was her share. Complainant sent Mr. Lassen a check satisfying the total amount of the mediation fees. Mr. Lassen told Complainant he was paying that bill. Bejarano Testimony 10:08:05. She was unaware the mediator fees had not been paid. [Bejarano Testimony, 10:08:38.] We note a statement from Mr. Lassen under "Costs Advanced," lists on August 28, 2009, he had advanced the $1,035.00 and paid the bill. That was untrue. [Respondent Ex. 9081-000242.] That same document shows Complainant paid $2,000 on September 21, 2009 and $3,000 on September 23, 2009.

Beginning in August 2009, monthly payment requests were sent to Mr. Lassen from Scott & Skelly, LLC, seeking the Complainant's $1,035.00 pro-rata share of the costs of the August 2009 mediation. [Amend. Jt. Prehrg. Stmnt. ¶ 30; Complaint admitted ¶ 38; SB Ex. 25, Bates SBA000226-235.] Complainant never saw these letters and was not notified of them. Mr. Lassen testified he received the letters and did not respond to them. [Lassen Testimony, 1:39:40.] However, after receiving a hand written note on the bottom of the final of those letters, he testified he called Mr. Skelly. [Ex. 25, Bates SBA0000235.] Mr. Lassen then testified he told Mr. Skelly that he was going to file bankruptcy and Mr. Skelly was a "pre-petition creditor." However he then testified he didn't know why the bill was not paid. Mr. Lassen acknowledged Complainant had paid him the monies for the mediation debt. [Lassen Testimony, 1:40:50.] He speculated he may not have paid it because of some "upset" regarding what he perceived to be a lack of good faith on the part of the other parties. [Lassen Testimony, 1:41:18.]

After a year of non-payment, on August 13, 2010, Scott & Skelly, LLC, filed the Arcadia-Biltmore Justice Court case entitled *Scott & Skelly, LLC v. Lassen and Bejarano*, Case No.: CC 2010-469389-SC ("Justice Court" case), which named both Mr. Lassen and Complainant and sought a judgment in the outstanding amount of $1,035.00, the pro-rata amount of mediation fees. [Amend. Jt. Prehrg. Stmnt. ¶ 30; Complaint admitted ¶ 39; SB Exs. 26, 28.] On August 24, 2010, Mr. Lassen was served with a copy of the Summons and Complaint. [Amend. Jt. Prehrg. Stmnt. ¶ 31; Complaint admitted ¶ 40; SB Ex. 26.] Mr. Lassen never communicated to Complainant about the lawsuit even though he was served. We note no affidavit or acceptance of service was presented regarding Ms. Bejarano. An affidavit for entry of default against Mr. Lassen was submitted to the court on September 30, 2010. [SB Ex. 27.] We note no similar affidavit for Ms. Bejarano has been presented to this Panel.

Regardless, Mr. Lassen never communicated to Complainant the entry of default against him even though he was aware of it. Whatever the method of service and default on Ms. Bejaran, Mr. Lassen testified he intentionally did not notify her of the lawsuit "[B]ecause "I accepted responsibility for that expense." He then explained he meant, "[W]hatever mechanism was available to have it paid should not affect her and that I was going to take responsibility for it." [Lassen Testimony, 1:42:09-1:42:36.] He acknowledged at some point he became aware judgment was being sought against Claimant. Still he did nothing.

On December 8, 2010, the court entered a judgment against both Mr. Lassen and Complainant in the Justice Court lawsuit. [Amend. Jt. Prhrg Stmnt. ¶ 33; Complaint admitted ¶ 42; SB Ex. 28.] Complainant was not informed by Mr. Lassen

of the Judgment despite the Judgment naming both of them and Mr. Lassen being personally aware of that judgment. [Bejarano Testimony, 10:10:10-10:12:00.] Mr. Lassen testified he knew this could be harm to his client: "As between us it was always my understanding and intent that, that was my responsibility, not hers. And I didn't want her to be bothered. Unfortunately, it became a bother to her." [Lassen Testimony, 1:44:40.]

Complainant did not learn there was a judgment against her regarding this until she hired new counsel, Tom Ryan. [Bejarano Testimony, 10:09:20.] Ultimately, Mr. Ryan settled the matter by speaking with Mr. Skelly, without payment from Complainant towards the debt. On March 28, 2013, a Satisfaction of Judgment was filed in favor of Complainant regarding the December 8, 2010 judgment in the Justice Court lawsuit. [SB Ex. 29.] Mr. Ryan notified Complainant of the satisfaction by email on that same date. [SB Exhibit 2, Bates 00010.]

We find Mr. Lassen violated ER 1.3. Mr. Lassen not only failed to act with reasonable diligence and promptness in representing Complainant on this issue; he failed to act at all. Mr. Lassen did not inform Complainant at all about this issue. Mr. Lassen also violated ER 1.4 as he repeatedly failed to reasonably consult with Complainant about this important issue.

We also find Mr. Lassen violated E.R. 3.2. Mr. Lassen made no reasonable efforts to expedite the proper resolution of this matter. As cited above, Comment to E.R. 3.2, "Dilatory practices bring the administration of justice into disrepute." We find Mr. Lassen's action far worse than "dilatory practices" regarding this issue.

We also find Mr. Lassen violated E.R. 8.4(c) and (d). We find the actions of Mr. Lassen fraudulent, dishonest and deceitful. He acknowledged he was paid the monies

by Complainant. He listed on his invoice that he had paid the bill of the mediator. He knew this was untrue. He received each letter stating the bill had not been paid and yet continued in his deceit. His actions were prejudicial to the administration of justice.

On August 24, 2009, opposing counsel filed a Motion for Summary Judgment regarding all of Complainant's claims. [Amend. Jt. Prhrg. Stmnt. ¶ 20; Complaint admitted ¶ 29; SB Ex. 8, Bates SBA000132-152.] On October 23, 2009, the Court granted the fully briefed Motion for Summary Judgment without oral argument finding "[c]omplainant had simply failed to present facts or law which allows her to sue for relief she seeks." [Amend. Jt. Prhrg. Stmnt. ¶ 22; Complaint admitted ¶ 31; SB Exs. 11, 13.] By minute entry dated December 1, 2009, the case was transferred to a new judge and all future hearings were ordered to be heard by the new judge. [Amend. Jt. Prhrg. Stmnt. ¶ 23; Complaint admitted ¶ 32; SB Ex. 12.] After filing a Motion for New Trial, Motion for Clarification of Minute Entry and Objection to the form of Judgment submitted by opposing counsel, the Court issued a Minute Entry on December 21, 2009, finding in pertinent part:

> "[t]he simple fact is that the Court found Defendant's positions to be legally and factually appropriate on every point. For example ... inadequate performance of one's job does not prevent one from being fired regardless of how legitimate one's whistleblowing activity ... Moreover, Plaintiff was not fired; instead, her contract was not renewed."

[Amend. Jt. Prhrg. Stmnt. ¶ 24; Complaint admitted ¶ 33; SB Ex. 12, Bates SBA000173.] The Court then denied all pending motions and awarded $42,852.05, in attorney fees, $2,147.95 in non-taxable costs, and $3,407.17 in taxable costs against Complainant. A formal judgment was entered on January 13, 2010. [Amend. Jt. Prhrg. Stmnt. ¶ 25; Complaint admitted ¶ 34; SB Ex. 12, 13.]

On February 11, 2010, Mr. Lassen filed a Notice of Appeal and the following day a Motion for Relief from Judgment under Rule 60(c), in which Mr. Lassen claimed receipt of new evidence supporting one of Complainant's claims. The court denied the motion finding the new evidence and the stated contentions insufficient to grant the motion. [Amend. Jt. Prhrg Stmnt ¶¶ 26-27; Complaint admitted ¶¶ 35-36; SB Exs. 14, 15, 16.]

Despite that ruling, on March 3 and 4, 2010, in response to a request from Complainant for a status of the case, Mr. Lassen replied:

a. "[w]e have not had a ruling or any hearing set on our trial court motion. I need to let you know that I think the appeal is likely the only way to get justice. That will unfortunately require additional appeal fees and costs to be incurred. I thus need to impose upon you to send or deliver more funds like you have so graciously done in recent months. Please be aware that I remain confident that in the end that we will win, and that these monies, and much more will be coming our way."
b. "I fully understand your concern, but I want you to remember that we ran into a scorched earth policy by the insurance company's lawyers and a lazy initially assigned judge."

Six (6) months later, Mr. Lassen wrote in an email to Complainant: "[T]he trial judge was lazy." [Amend Jt. Prhrg. Stmnt. ¶¶ 28, 32; Complaint admitted ¶¶ 37, 41; SB Ex. 2, Bates SBA000049, 58, Ex. 16.] Mr. Lassen acknowledged he told his client in three emails that Judge Mangum was lazy. [Lassen Testimony, 1:46:54.] Complainant never responded to Mr. Lassen's comments against the judge, but she testified that these comments were consistent throughout the representation both verbally and in e-mails. [Bejarano Testimony.] Mr. Lassen was asked if he could see how that could be interpreted as disparaging a judge. He testified his communication about the judge was a confidential communication. [Lassen Testimony, 1:47:22.]

From that we conclude Mr. Lassen believes an attorney cannot disparage a judge in communications with a client. We disagree.

Notwithstanding, we decline to find Mr. Lassen violated E.R. 8.2(a). We do not believe these private comments rise to the level of a violation. We find the State Bar failed in its burden of proof to demonstrate these comments violated E.R. 8.2(a).

From September 21, 2009 to May 7, 2010, Complainant paid Mr. Lassen $34,000.00 by check including the $1,034.00 in mediation fees. [SB Ex. 2, Bates SBA000078-90.] On October 5 2009, Complainant paid an additional $7,040.00 to Mr. Lassen. [Id.]

On January 10, 2011, Mr. Lassen informed Complainant that an appeal had been filed. [Respondent Ex. 9082-000071.] On February 17, 2011, Mr. Lassen sent Complainant a letter informing her he was still waiting for a decision from the Arizona Court of Appeals. [Respondent Ex. 9082-000060.] On April 12, 2011, Division One of the Court of Appeals filed a Memorandum Decision in *Bejarano v. Roosevelt Elementary School District, et al*, 1 CA-CV 10-0231, affirming the lower court rulings. [Amend. Jt. Prhrg Stmnt. ¶ 34; Complaint admitted ¶ 43; SB Ex. 17.] The Court of Appeals found Mr. Lassen had failed to preserve for appeal any challenge to the trial court's decision to grant summary judgment on her defamation claims. More importantly, the Court of Appeals found Mr. Lassen failed to properly present the issue of the trial court's award of attorney fees against Complainant. Mr. Lassen failed in his brief to raise any challenge to that award of attorney fees and did not cite to the trial court record. [SB Ex. 17, Bates SBA000202.]

On May 24, 2011, Mr. Lassen emailed Complainant telling her he was filing a Petition for Review with the Supreme Court. He also informed her, "I am not charging

you for my time, but there is a filing fee and costs for copying and binding of briefs. If you could send $750 I would be most appreciative, this should be the last of costs. I am hopeful that petition will be granted, it looks good." [SB Ex. 2, Bates SBA000062.] During the hearing, Mr. Lassen in cross-examining Complainant repeatedly used leading questions, which he was permitted to do. He asked her if it wasn't a fact "I agreed to take on the appeal on a costs only basis." [Bejarano Testimony, 10:59:40.] But she disagreed pointing that he began asking for lump sum payments. We note Ms. Bejarano paid Mr. Lassen $9,000 on April 29, 2010, $1,500 on May, 7, 2010 in addition to the $750 on May 25, 2011, requested by him in the letter above referenced. [Respondent Ex. 9082-000233.]

It was undisputed all communication between Mr. Lassen and Complainant ceased between June 2011 and early 2013. [Complaint admitted ¶ 44; Bejarano Testimony.] The testimony of Complainant was not refuted by Mr. Lassen that he never told her the Supreme Court, by its Order dated October 25, 2011, had denied the petition for review. [Bejarano Testimony, 11:02:26.] Mr. Lassen never told her the judgment as a result was final. We find no evidence in the record to the contrary; giving no notice of any kind to her that his representation had terminated.

We find it entirely reasonable that Complainant assumed Mr. Lassen continued to represent her until the appeal was final. Mr. Lassen knew or should have known his failure to communicate the result of the petition for review would likely cause her harm. Mr. Lassen violated ER 1.16(d) in failing to take the steps necessary to protect his client. Mr. Lassen was required to take the steps to protect her interests, "such as giving reasonable notice to the client...." Mr. Lassen simply abandoned her.

There is nothing in the record that demonstrates Mr. Lassen sat down and discussed with Complainant the ramifications of the finality of the judgment. There is nothing in the record that demonstrates he sought to recover her sick day monies despite his promise in writing he would. As pointed out above, if Mr. Lassen intended to dispute the attorney fees awarded against Complainant by the trial court, as with the sick days, he failed to do so. Likewise, he failed to properly conclude his representation with his client by taking the steps "reasonably practicable to protect a client's interests, such as giving reasonable notice to the client." His failure to do so caused her direct harm as a result and further potential harm from a later issued arrest warrant.

The State Bar argues Mr. Lassen was still attorney of record for Complainant during the time he was suspended in PDJ-2011-9079 for thirty days for violating several E.R.s, effective April 28, 2012, and after he was reinstated on June 25, 2012. [SB Ex. 38, 39.] They had no communications at all.

Bar Counsel also expressed his concern Mr. Lassen never filed a Notice of Withdrawal. We are more than troubled by the actions of Mr. Lassen and his inaction in not communicating with his client the finality of the judgment and its implications. However, we are cited to neither rule nor law that provides he was still attorney of record after the Petition for Review was denied and the Mandate from the Court of Appeals issued.

Civil Rule 5.1(a)(1) provides the attorney of record is responsible "until the time for appeal from a judgment has expired or a judgment has become final after appeal...." We are not convinced Mr. Lassen continued as counsel of record, despite his failing in his obligation to notify his client of the finality of the judgment. We

therefore decline to find Mr. Lassen violated Supreme Court 72 by failing to notify Complainant of his suspension occurring after the mandate in the underlying action.

On or about January 17, 2013, the School District obtained an order for Complainant's appearance at a Judgment Debtor Examination. [Ex. 2, Bates SBA000106-110; Ex. 20.] Complainant was personally served with that order of appearance [SB Ex. 26], but she alleged Mr. Lassen failed to inform her that she was compelled to appear or face possible arrest during her last discussions with him. [Bejarano Testimony.] On March 1, 2013, the Court issued a Civil Arrest Warrant directing any peace officer to arrest Complainant for her failure to appear at the Judgment Debtor Examination with a cash bond of $1,000.00. [SB Ex. 21.] Mr. Lassen testified he never received notice of the Civil Arrest Warrant. [Lassen Testimony.] We find nothing in the exhibits to support he did receive notice.

Complainant retained successor counsel, Thomas Ryan, for representation. Complainant did not learn of the initial judgment against her for attorney's fees and costs until informed by successor counsel, Mr. Ryan. [Bejarano Testimony, 10:10:10.]

On March 12, 2013, Mr. Ryan filed a Motion to Quash the Civil Arrest Warrant as he began negotiating a settlement on behalf of Complainant. [SB Ex. 22.] In early 2013, Complainant refinanced her home and paid the amounts, including interest. [SB Ex. 2, Bates SBA000111; see also Bejarano Testimony.] The failure of Mr. Lassen to inform Complainant of the finality of the Superior Court Judgment led to her unintentional non-payment resulting in a lien affecting her ability to refinance her home to satisfy the judgment once she learned of it. [SB Ex. 2, SBA000100, 103.] Complainant testified that the refinancing of her home caused hardship and personal

turmoil in her household as did the arrest warrant. [Bejarano Testimony.] On March 26, 2013, a Satisfaction of Judgment was filed in favor of Complainant for full payment of the January 13, 2010 judgment in the Superior Court lawsuit. [SB Ex. 24.]

We find Mr. Lassen violated E.R. 8.4(d). The failure of Mr. Lassen to inform Complainant of the Supreme Court denial of the Petition for Review and the issuance of the Mandate by the Court of Appeals and the implications of the finality of the judgment was inexplicable. His inaction virtually assured what followed.

On February 20, 2014, the State Bar mailed Mr. Lassen an initial screening letter requesting that a response to the allegations to be provided within twenty days. [SB Ex. 3.] The initial screening letter also informed Mr. Lassen that his failure to fully and honestly respond to, or cooperate with the investigation are grounds for discipline pursuant to Rule 54(d) and Rule 42, Ariz. R. Sup. Ct., E.R. 8.1(b). [Id.] On March 19, 2014, the State Bar mailed Mr. Lassen a second request for a response to be provided within ten days. [SB Ex. 4.] The second letter again informed Mr. Lassen that his failure to fully and honestly respond to, or cooperate with the investigation are grounds for discipline. [Id.] To date, Mr. Lassen has not responded to the State Bar regarding Complainant's allegations. Mr. Lassen testified he had not responded to any of those requests. [Lassen Testimony, 1:48:00.]

The closing argument of Mr. Lassen makes clear his failure to respond was intentional. He declared the charges of his clients untenable, the Attorney Discipline Probable Cause Committee and Bar Counsel's actions unconstitutional and concluded that "relieves the Respondent of any duty to response as the Complaints were facially defective." [Respondent Closing Argument, p. 5, lines 17-18.]

We find Mr. Lassen violated E.R. 8.1(b) and Supreme Court Rule 54(d), by refusing to cooperate, furnish information or respond to the inquiry and request from Bar Counsel regarding these charges.

Count Two (File No. 14-0784/Riccio)

Mr. Gregory Riccio ("Complainant" under this count) knew Mr. Lassen for a number of years in his capacity as a school administrator. Mr. Riccio hired Mr. Lassen on approximately October 10 or 12, 2012. Mr. Riccio had an insurance policy through his educational association membership for attorney fees. [Riccio Testimony, 10:40:28.] Mr. Lassen assured Mr. Riccio he would word their agreement in such a way Mr. Riccio would be reimbursed for the $2,000 personally paid by Mr. Riccio to Mr. Lassen.

Mr. Lassen prepared a claim on the insurance policy, setting down a hourly rate for the insurance company that was higher than the amount Mr. Riccio was being charged. In addition, Mr. Lassen was to be paid a percentage of any proceeds to assure he had "skin in the game." The claim was made on the insurance for the policy limits of $7,000 and the proceeds paid to Mr. Lassen. Mr. Lassen was then to return the previously paid $2,000 retainer funds to Mr. Riccio. This would leave Mr. Lasssen with a $5,000 fee paid by the insurance company. [Riccio Testimony, 11:41:49-11:42:36; SB Ex. 31, SBA 000256.]

A letter of concern was to be written by Mr. Lassen to the school not later than December 18, 2012. Mr. Lassen requested Mr. Riccio write it and then Mr. Lassen would "tweak it" and send it to counsel for the school. Despite this directive from his client, Mr. Lassen did not send the letter. Complainant and his wife met with Mr. Lassen approximately four times between November 2012 and February 2013. [SB

Ex. 30; Riccio Testimony, 11:46:52.] In each meeting Mr. Lassen repeated similar excuses including being on his second or third secretary and his own health issues as to his progress on the matter. Subsequently, Complainant thought the letter had been sent. It wasn't until he returned from the holidays that he discovered it had not been sent.

As a result of the inaction of Mr. Lassen, counsel for the Board was unaware of the position of Complainant. This resulted in Complainant being notified he would be terminated from his position in February 2013. [Riccio Testimony, 11:47:56.] Mr. Lassen was instructed to send the letter to counsel for the board prior to the termination date of February 15, 2013. Complainant prepared a draft for that purpose and sent it to Mr. Lassen. [SB Ex. 34, SBA000272-274.] Mr. Lassen again failed to send it. Complainant was terminated from his employment. [Riccio Testimony 11:48:39; SB Ex. 31, SB000252.] This resulted in a meeting with the lawyer for the District who stated he was completely unaware of the concerns of Complainant as Mr. Lassen had told the District's counsel nothing the actions of the Board chair that was the basis of the claim of Complainant. [Riccio Testimony, 11:48:56.]

With the deadline passed and litigation being the only option, Complainants signed a fee agreement setting forth the hourly rate of $125.00 per hour along with 30% of the anticipated settlement proceeds. [SB Ex. 34.] Mr. Lassen assured Complainant his claim was worth $1,000,000. [Riccio Testimony, 11:54: 00.] Mr. Lassen was instructed to file a notice of claim. Complainant handed Mr. Lassen a check for $2,000 representing $500 dollar a month payments for March through June for the ongoing pursuit of the claim. Complainant was to get a statement every

month. Mr. Lassen anticipated the litigation taking two years. [Riccio Testimony, 11:55:00.] Mr. Lassen was to notify Complainant each month and Complainant would then pay him an additional $500 per month until the law suit was filed and concluded. Mr. Lassen initially failed to send a statement and then later refused to.

The wife of Complainant was clear they wanted statements each month, but heard nothing from Mr. Lassen. [Riccio Testimony, 11:49:40.] In an e-mail dated March 12, 2013, Mr. Lassen contacted Complainant regarding a "global" notice of claim purportedly being prepared on Complainant's behalf. [SB Ex. 31, Bates SBA 000254.] Among other promises, Mr. Lassen promised that a draft would be prepared quickly so that "we can get it served next week." [Id.] Complainant assumed the claim had been made. [Riccio Testimony, 12:01:00.] However, unknown to Complainant was that Mr. Lassen neither sent a letter of intent nor notice of claim. [Riccio Testimony, 11:47:30; SB Ex. 31, SBA000252.]

On April 11, 2013, Complainant emailed Mr. Lassen that Complainant received notice that his wife was approved to become his beneficiary – thereby eliminating one of the proposed sections of Complainant's notice of claim. [SB Ex. 31, SBA000243-44.] Complainant's email stated, in part, "[s]o, if you haven't sent out the claim, you can strike that and if you have already, se (sic) la vie!" [SB Ex. 31, Bates SBA000243-244, 249.] Complainant only meant to strike the part of his wife's loss, but still desired for Mr. Lassen to send out the claim and assumed it had been sent. [Riccio Testimony, 11:50:48; see also SB Ex. 31, SBA000252.]

Mr. Lassen did not respond to the April 11, 2013 e-mail. Complainant attempted to reach Mr. Lassen in August by telephone and received a recorded message that the office was closed beginning July 22, 2013. [Riccio Testimony,

11:50:16; SB Ex. 31, SBA000245.] Complainant and his wife traveled to Europe between August 2013 and October 2013. Upon their return in October 2013, Complainant attempted to contact Mr. Lassen and again received the same recording that the offices were closed beginning July 22, 2013. [Riccio Testimony, 11:50:50.] From between April 11, 2013 until January 2014, Complainant received no communication from Mr. Lassen at all. [Riccio Testimony, 12:05:43.] Complainant subsequently learned Mr. Lassen did not send a notice of claim. Complainant never received statements detailing his work at all during his representation. Between January 2014 and February 2014, Complainant sent Mr. Lassen several e-mails alleging that Mr. Lassen failed to perform the agreed upon legal services or take any substantive action. On February 18, 2014, Complainant emailed Mr. Lassen stating, in pertinent part:

> "Please note it has been **seven** weeks since I communicated to you and if you had not sent the letter of intent and filed the claim last year, I wanted you to return my $2,000 back."
>
> "This email below sent to me in March 2013 is is (sic) just one of many where you said you would get the letter out within a week-and did not."
>
> "Your delays in sending notice cost me sick leave of 34 days and much, much more. I am willing to move on, but I am not willing to do do (sic) so without you returning the $2000.00. The email below from you is clearly stating that you were going to send the notice in mid-March, and from the time in December before this when you told me you had some health issues, until now, you have consistently told me one thing and found an excuse to now follow through."

[SB Ex. 31, Bates SBA000254.]

On February 19, 2014, Mr. Lassen responded by acknowledging the receipt of seven thousand dollars ($7,000.00) and reciting certain discussions that purportedly occurred between Mr. Lassen and others. [SB Ex. 31, Bates SBA000256.] The e-mail

further states, among other things, that "[i]t is important to note that your total payment to me did not come close toch (sic) the time expended even as of January 28, 2013., (sic)...I do apologize for now (sic) responding earlier, but the situation with my secretary who appears unable to carry on has been a difficult and delicate one. Again, I have no problem with sitting down and going over everything with you." [Id.]

On March 20 2014, Complainant responded stating in part,

> "Now, I may have used up the money for March, April, May and June...I don't know. I do know that we just spent over six weeks going back and forth trying to sort this out. So, send me a statement for time spent over the six weeks...if that time utilizes the $2000.00 then we are finished and I will not pursue this further...Now again, to be clear, send us the itemized statement of date and time you worked on my behalf...."

[SB Ex. 31, Bates SBA000257.] As of the hearing in this matter, Complainant has not received a response to the March 20, 2014 e-mail. [Riccio Testimony, 12:07:10; see also Lassen Testimony.] Further, despite repeated requests, Mr. Lassen has failed to provide Complainant an accounting for the funds paid during the entire representation. [Riccio Testimony, 12:07:43.]

Mr. Lassen testified that the goals of the lawsuit changed substantially throughout the representation. [Lassen Testimony; see also Respondent's Ex. 9082-001053; 9082-10014; 9082-000937-38; 9082-000675; 9082-1062.] We find the record does not substantiate his contention.

In his closing argument, Mr. Lassen argues there was no written agreement. We note this recurrent pattern of Mr. Lassen of intentionally refusing to adhere to E.R. 1.5(b) and then utilizing the absence of a written fee agreement as a defense. We find a motive to take advantage of his clients to profit himself. As with the prior count, Mr. Lassen alters his position and then terminates representation without

notice in violation of E.R. 1.16(d). He does not dispute he refused to send any statements for services and never timely sent the pre-litigation letter nor the notice of claim. Mr. Lassen, in a footnote, argues, "Dr. Riccio ignored the multiple emails, phone calls to opposing counsel and correspondence all sent in efforts to reach a mutually agreed upon resolution." Mr. Lassen offered emails to demonstrate his communications. But we find little else demonstrating work product that followed the directives of his client. We are not inclined to follow the argument of Mr. Lassen that his communications constituted work product when they did not to follow the directives of his client and he refused to produce for his client or the State Bar, the documents purportedly reflecting his work. Mr. Lassen intentionally refused to deliver any statement demonstrating his work product to his client. Nothing precluded him from calling opposing counsel or producing proof of a delivery of a statement of the services he purportedly rendered. We find his argument implausible and not supported by the evidence.

We find Mr. Lassen failed to abide his client's decisions concerning the representation in failing to prepare and file the notice of claim or letter of intent. We find Complainant informed Mr. Lassen that time was of the essence in sending out a pre-notice, which term was used by Mr. Lassen. Time was of the essence and that document was not sent before his termination. Mr. Lassen told Complainant multiple times that he was preparing the Notice of Claim and that it would be sent out soon. On March 12, 2013, Mr. Lassen contacted Complainant regarding a "global" notice of claim being prepared on Complainant's behalf.

We find over the course of 2013, Mr. Lassen told Complainant multiple times he was preparing a notice of claim and letter of intent. After coming back from

vacation on October 2013, Complainant had great difficulty communicating with Mr. Lassen. Complainant discovered Mr. Lassen never sent out the notice of claim. Complainant then sent Mr. Lassen several e-mails alleging Mr. Lassen failed to perform the agreed upon legal services. At this point, Complainant demanded return of $2,000 of his fees due to Mr. Lassen's failure to send out a notice of claim. Mr. Lassen testified that the goals of the lawsuit changed substantially throughout the representation and that the lawsuit became a moving target, making the claims unclear.

Even if Mr. Lassen's assertions that the claims became unclear are with merit, his failure to send out a notice of claim is not excused. As evidenced above, Complainant emphasized the importance of a timely Notice of Claim and Mr. Lassen understood the importance of it. He made multiple empty promises to Complainant that the notice would be completed and sent out timely. Even if the lawsuit became a "moving target," it was Mr. Lassen's duty to clarify the claims and the goals of the lawsuit. Instead, Mr. Lassen became nearly absent from his representation and chose not to clarify anything with Complainant. Thus, Mr. Lassen also failed to act diligently in representing Complainant.

We find Mr. Lassen violated E.R. 1.2 by failing to abide by his client's decisions concerning the objectives of representation. He violated E.R. 1.3 by repeatedly failing to act with reasonable diligence and promptness. Mr. Lassen violated E.R. 1.4 by failing to reasonably consult with his Complainant, failing to keep him reasonably informed and to promptly comply with reasonable requests for information. We also find Mr. Lassen violated E.R. 1.5 when he charged, collected, and retained unreasonable fees during the representation. Mr. Lassen acknowledges he violated

E.R. 1.5(b) by having no written agreement with Complainant. Further, Mr. Lassen has offered little written documentation to his client to support his testimony or arguments. He violated E.R. 1.15 by failing to promptly render a full accounting of the fees he was paid. He violatd E.R. 1.16 by refusing to take the steps reasonably practicable to protect his client's interest nor to give notice of that termination. Under the circumstances of billing the insurance company in advance and at a heightened billing rate, we also find Mr. Lassen violated E.R. 8.4(c). We find his conduct was dishonest, deceitful and involved misrepresentation.

On March 27, 2014, the State Bar mailed Mr. Lassen an initial screening letter requesting that a response to the allegation be provided within twenty days. The initial screening letter also informed Mr. Lassen that his failure to fully and honestly respond to, or cooperate with the investigation are grounds for discipline pursuant to Rule 54(d) and Rule 42, Ariz. R. Sup. Ct., E.R. 8.1(b). [SB Ex. 32.] On April 22, 2014 the State Bar sent Mr. Lassen a second letter giving him ten (10) days to respond to the March 27 letter. [SB Ex. 33.] As of the date of the hearing in this matter, Mr. Lassen had not responded to the State Bar regarding Complainant's allegations. We find Mr. Lassen violated ER 8.1 and Rule 54(d), Ariz. R. Sup. Ct., for failing to respond to a lawful demand for information and refusing to cooperate with the State Bar.

Count Three (File No. 14-2071/Foster and Thompson)

Mr. Lassen was suspended from the practice of law in PDJ 2013-9068 (State Bar Nos. 11-3770 and 12-2382) for a period of eighteen months effective May 7, 2014. [Complaint admitted ¶83. SB Exs. 41-43; Joint Prhrg. Stmnt. ¶83; Lassen Testimony 2:06:57.]

On or about June 24, 2014, Mr. Lassen signed and submitted a pleading in the State of Arizona Board of Education case of *In the Matter of Jeff S. Williamson,* C-2013-071. In his answer Mr. Lassen specifically denied he signed this pleading. In his testimony he admitted he signed the pleading. Mr. Lassen swore he signed it for William Hobson. He testified he knew it was not the preferred practice but it was done fairly often. Mr. Lassen agreed the date of the sending of the pleading was correctly listed on the cover later which was dated June 24, 2014. Mr. Lassen swore he knew he was suspended at the time he signed the pleading. We find he was suspended at the time of his signing the pleading. Mr. Lassen swore the pleading was not required to be signed by the attorney of record, stating others could sign at the direction of the attorney of record. He also testified it was done by paralegals and is not the preferred practice, but is authorized under the rules especially now with electronic filings. [SB Ex. 46, Bates SBA000387-391; Lassen Testimony, 2:09:13.]

The June 24, 2014 cover letter accompanying the action contained the letterhead of "Law Office of Gary L. Lassen, PLC" and was signed by Ellen S. Carpenter who listed herself as the "Legal Assistant to Gary L. Lassen." [SB Ex. 46, SBA000387.] Mr. Lassen testified the letterhead was an oversight on the part of his legal assistant, but took no steps to correct that oversight. [Lassen Testimony, 2:11:06.] We find this implausible. As demonstrated in the count that follows, Mr. Lassen had no hesitation continuing to use his law office letterhead even in July, 2014. [SB Ex. 48, SBA000404.]

Mr. Lassen testified he signed the pleading under the direction of attorney William Hobson. "Yes, that was done at his direction." Mr. Lassen acknowledged at the time of his signing the pleading, the client, Jeff S. Williamson, had never met Mr.

Hobson. [Lassen Testimony, 2:11:29 and 2:14:40.] We find his testimony not credible.

Mr. Hobson was not aware at the time of the filing of the answer of anything relating to the case. He first became aware of Mr. Lassen signing his name after he received a call from Assistant Attorney General Jinju Park in early August, 2014. [Hobson Testimony, 2:42:20.] He had been on vacation out of state from July 23 to August 3, 2014. [Hobson Testimony, 2:40:40.] He informed her he does not recall ever allowing or authorizing Mr. Lassen or anyone else to sign the motion on his behalf. [Hobson Testimony, 2:43:01.] Mr. Hobson was aware that Mr. Lassen was suspended and testified that he would not allow a suspended attorney to sign a pleading on his behalf. [Id.]

Assistant Attorney General Jinju Park represented the State of Arizona in the case. She received the letter and pleading from the office of Mr. Lassen. It was confusing to her because the cover letter was from the office of Gary L. Lassen but the pleading was from the office of William Hobson. Ms. Park concluded from the cover letter Mr. Lassen was licensed to practice law in Arizona. [Park Testimony, 11:28:15; SB Ex. 46 SBA 000487-91.]

Thereafter, Mr. Lassen called Ms. Park to discuss settling the case of Mr. Williamson. To the best of Ms. Park's recollection, Mr. Lassen told Ms. Park that Mr. Williamson had made a mistake and not done the things alleged in the investigation and alleged in the complaint. She testified Mr. Lassen told her Mr. Williamson should not be disciplined for unprofessional conduct. Ms. Park states she told Mr. Lassen that seemed like a factual issue and if certain events occurred perhaps that could be resolved in a settlement conference. Mr. Lassen informed Ms. Parks he would confer

with his client and get back with her. [SB Ex. 46, Bates SBA000385-6; Park Testimony, 11:30:23.]

From the statements of Mr. Lassen, Ms. Park believed Mr. Lassen represented Mr. Williamson. She believed Mr. Lassen may have also requested the complaint be dismissed. [Park Testimony, 11:31:35.] Upon learning from her paralegal that Mr. Lassen's license had been suspended, Ms. Park contacted the Attorney General Ethics Counsel on June 26, 2014, asking what office policy was regarding the issue. [Parks Testimony, 11:32:53; SB Ex. 46, SBA000385.] Mr. Lassen testified the only purpose of his call was to ask whether an answer had to be filed by Mr. Williamson. We do not find the testimony of Mr. Lassen credible. [Lassen Testimony, 2:11:50.]

We find Mr. Lassen violated E.R. 5.5 by engaging in the unauthorized practice of law while suspended when he deceitfully signed a motion while suspended and without authorization. Mr. Lassen also negotiated with Ms. Park, leading her to conclude he was an attorney representing the client and sought to settle the case.

We find Mr. Lassen violated E.R. 8.4(c). Mr. Lassen knowingly engaged in conduct involving dishonesty, deceit, or misrepresentation by holding himself out as a licensed attorney representing Jeff S. Williamson during his conversation with Ms. Park.

While the State Bar argues Mr. Lassen violated Rule 54(d), Ariz. R. Sup. Ct., by failing to respond to a lawful demand for information and refusing to cooperate with the State Bar in this charge, we find neither exhibits nor testimony to support their contention and dismiss that allegation in this Count.

Count Four (File No. 14-2297/Judicial Referral)

Mr. Lassen represented the plaintiff in the United States District Court case of *Turney v. Farmers New World Insurance Company*, CV-13-01283-PHX-SPL. [Lassen Testimony, 2:15:50, see also SB Exs. 48-51.] During the representation, Mr. Lassen was suspended from the practice of law in PDJ-2013-9068 (State Bar Nos. 11-3770 and 12-2382) for a period of eighteen months. The suspension was effective May 7, 2014. [Lassen Testimony 2:06:57; SB Exs. 41-43.] Mr. Lassen did not give notification as required under Supreme Court Rule 72 to opposing counsel of his suspension until July 2014 when the Supreme Court denied his special action requesting a stay of that suspension. Even then he only gave oral notification. He also gave no notice to the Federal District Court as required by Local Rules of that Court.

As an admitted attorney of the Arizona District Court, Mr. Lassen was aware of F.R.Civ.P. 83. He knew or should have known under that Federal Local Rule, his continuing membership in the bar of that Court was "limited to attorneys who are active members in good standing of the State Bar of Arizona." Further, he knew or should have known that Rule required, "[A]ny attorney admitted or authorized to practice law in this Court who is disbarred or subjected to other disciplinary action in any other jurisdiction shall promptly report the matter to this Court."

United States District Judge Steven P. Logan found by Order dated July 18, 2014, Mr. Lassen "[H]as not notified the Court at any time of his suspension...." The Court then withdrew him as counsel and ordered the Clerk of Court to "**terminate Gary Lassen** from this action." (Emboldened type included in original.) [SB Ex. 51 SB000445, Footnote 1 and SB000446, Lines 15-19.]

Mr. Lassen, at the time of our hearing, was aware of the District Court finding. Notwithstanding he swore, despite not giving notification of his suspension to that District Court, that he remained authorized to practice in that Court "under the law." We find implausible Mr. Lassen was practicing in the District Court with no knowledge of its local rules. We conclude Mr. Lassen intentionally refused to adhere to the Supreme Court Rules and the District Court Local Rules in order to continue to profit himself by practicing law. [Lassen Testimony, 2:17:22 and 2:20:01.]

On July 7, 2014, opposing counsel discovered Mr. Lassen had been suspended and questioned him about his continued representation of plaintiff in the lawsuit during his suspension. By letter dated July 7, 2014, the letterhead for the Law Office of Gary L. Lassen, PLC, Mr. Lassen informed opposing counsel that plaintiff obtained substitute counsel. He stated, William Hobson and Kevin Koelbel "have agreed to substitute in this matter" and the appropriate notices of substitution of counsel would be filed. [SB Ex. 48, SBA000404.] Mr. Lassen knew this was untrue. Mr. Lassen testified Mr. Koelbel "indicated he was not going to become involved in that case." [Lassen Testimony, 2:24:55.] In fact Mr. Lassen had at best given the name of his client to each of them but neither had "agreed to substitute in this matter."

Mr. Lassen contended William Hobson had agreed to substitute as counsel. Mr. Lassen testified the problem with the sequence of events was entirely due to Mr. Hobson being out of town for the entire month of July, 2014. [Lassen Testimony, 2:24:38.] Mr. Lassen swore Mr. Hobson had told him prior to the time of his letter to opposing counsel that he had agreed to substitute as counsel in the matter. We find this untrue.

We find Mr. Hobson had not agreed to take the case until after his review. He was not out of state for the entire month but rather from July 23 to August 3, 2014. He had not agreed to substitute as counsel, but rather was reviewing the file and was unaware of status of the case until his return in August, 2014. [Hobson Testimony, 2:37:03, 2:40:40]

We find the statement of Mr. Lassen to opposing counsel was false. He knew Mr. Hobson only showed interest in the case and required a review of the file before he would agree to substitute into the case. At the time of the letter of Mr. Lassen to opposing counsel there was no agreement and Mr. Lassen knew it. [Lassen Testimony, 2:25:06.]

On July 8, 2014, opposing counsel contacted the purported substituting attorneys. Mr. Koelbel told them what he had already informed Mr. Lassen, he was not involved in the lawsuit and would not substitute in as counsel of record. [SB Ex. 48, SBA000406-411.] The record does not demonstrate Mr. Hobson replied to their inquiry. This resulted in the opposing counsel filing the Emergency Motion for Rule 16 Conference and Motion to Compel. [SB Ex. 48.] On July 18, 2014, Judge Logan issued the order referenced above. [SB Ex. 51.]

We find Mr. Lassen violated E.R.s 1.3 and 1.4 and Rule 72, Ariz. R. Sup. Ct., by failing to inform his client, opposing counsel, and the Court he was suspended from the practice of law. Mr. Lassen also violated E.R. 1.16(d) by failing to take the steps necessary to protect his client. Mr. Lassen had a duty to inform the client he was suspended. He knew of the suspension and failed to assure he had substitute counsel in a timely manner. Instead, it appears Mr. Lassen continued his representation and acted in disregard of his client's rights.

Mr. Lassen violated E.R. 5.5 by engaging in the unauthorized practice of law during his suspension period. Mr. Lassen violated E.R. 8.4(d) by engaging in conduct which was prejudicial to the administration of justice. His actions were in violation of Federal Local Rules and caused Federal and Court resources to be wasted as well as halting his client's legal proceedings.

While the State Bar argues Mr. Lassen violated Rule 54(d), Ariz. R. Sup. Ct., by failing to respond to a lawful demand for information and refusing to cooperate with the State Bar, we find neither exhibits or testimony to support such argument. The State Bar has failed in its burden of proof as to that allegation in this Count.

CONCLUSIONS OF LAW AND DISCUSSION OF DECISION

The Panel finds clear and convincing evidence Mr. Lassen violated E.R.s 1.2 (failure to abide to client's decisions), 1.3 (diligence), 1.4 (communication), 1.5 (unreasonable fees), 1.15 (failure to return unreasonable fees), 1.16(d) (failure to properly withdraw representation), 3.2 (failure to make reasonable efforts to expedite litigation), 8.1 (failure to respond to lawful demand for information from the disciplinary authority), 8.4(c) (conduct involving dishonesty, fraud, deceit, or misrepresentations), 8.4(d) (conduct prejudicial to the administration of justice), Rule 54(d) (refusal to cooperate with bar counsel), and Rule 72 (failure to notify opposing counsel and court of suspension).

VI. SANCTIONS

In consideration of an appropriate sanction, the Panel considered the following factors set forth in the American Bar Association *Standards for Imposing Lawyer Discipline (Standards):*

(a) the duty violated;
(b) the lawyer's mental state;

(c) the potential or actual injury caused by the lawyer's misconduct; and
(d) the existence of aggravating or mitigating factors. *Standard* 3.0.

The Panel determined that a detailed discussion of the *Standards* on a count by count basis is not necessary and applies the *Standards* to Mr. Lassen's most egregious violations. See *In re Woltman*, 181 Ariz. 525, 892 P.2d 861 (1995). That does not ignore the multiple other violations we noted above.

Standard 4.41, *Lack of Diligence*, is applicable to Mr. Lassen's violations of Rule 42, E.R.s 1.2, 1.3, and 1.4. Mr. Lassen knowingly failed to perform services for his clients in counts one and two causing potentially serious injury to his client. *Standard* 4.41 provides Disbarment is generally appropriate when:

> (a) a lawyer knowingly fails to perform services for a client and causes serious or potentially serious injury to a client, or
> (b) a lawyer engages in a pattern of neglect with respect to client matters and causes serious or potentially serious injury to a client.

In Count One, Mr. Lassen received multiple e-mails from Complainant about addressing her sick days. Mr. Lassen responded to Complainant twice about these sick days but never addressed them to the school district. Mr. Lassen did not communicate reasonably throughout the lawsuit with Complainant in that she had to wait weeks at a time for a response from Mr. Lassen about the lawsuit. To make things worse, Mr. Lassen never communicated to Complainant that there was an active lawsuit against her and he failed to terminate his representation with Complainant. Thus, Mr. Lassen knowingly failed to perform services for his client causing potentially serious monetary harm in that Complainant never had a chance to receive compensation for her sick days and never received notice of a lawsuit against her.

In Count Two, Complainant communicated to Mr. Lassen multiple times about timely communicating to the Board and timely sending out a Notice of Claim. Although Mr. Lassen made drafts of the Notice of Claim, he did not timely send them to the school district as promised. Mr. Lassen argues that the claims became moving targets and overly complex; however, Mr. Lassen should have diligently tried to clarify the claims with Complainant. Instead, Mr. Lassen did not communicate reasonably with Complainant throughout the lawsuit regarding these claims. At a minimum, Mr. Lassen left Complainant unattended and uninformed with a simple answering machine message that he would be unavailable starting July 22, 2013. Further, he failed to respond to Complainant's e-mails of April 11, 2013 and February 20, 2014. Thus, Mr. Lassen failed to perform the services that he was hired to do causing Complainant's lawsuit to not go forward and causing serious or potentially serious monetary harm.

Standard 4.61, *Lack of Candor*, is applicable to Mr. Lassen's misconduct in violation of E.R.s 1.5 and 8.4(c). *Standard* 4.61 provides:

> Disbarment is generally appropriate when a lawyer knowingly deceives a client with the intent to benefit the lawyer or another, and causes serious injury or potentially serious injury to a client.

In Count One, Mr. Lassen Mr. Lassen charged unreasonable fees to Complainant throughout the representation. There was no written agreement. The parties had an oral contingency fee agreement. If the case was handled on an hourly basis we would not be inclined to make this finding. From September 21, 2009 to May 7, 2010, Complainant paid Mr. Lassen thirty-four thousand dollars ($34,000.00) by check including the one thousand thirty-four ($1,034.00) in mediation fees. On October 2009, Complainant paid an additional seven thousand forty dollars ($7,040.00). To make these excessive fees worse, Mr. Lassen never paid the one thousand thirty-four

($1,034.00) for the mediation causing an adverse lawsuit against Complainant, which Mr. Lassen never informed Complainant about. Complainant has provided checks and receipts documenting purported "cost payments" of forty six thousand one hundred forty nine dollars ($46,149.00), and despite repeated demands, Mr. Lassen has not provided Complainant with an accounting of these funds. He had similar conduct in Count Two.

In Count Three, Mr. Lassen knowingly represented his client while he was suspended for his own benefit by signing a motion purportedly on behalf of another attorney and communicating with Ms. Park about legal matters on behalf of his client.

In Count Four, Mr. Lassen knowingly represented his client while he was suspended for his own benefit. Mr. Lassen never told the court, opposing counsel or his client of his suspension, which was discovered by opposing counsel. Only after this discovery did Mr. Lassen try to take actions in finding substitute counsel but failed to do so. Mr. Lassen's actions caused actual injury in that his client's lawsuit was postponed and all court proceedings stayed.

Standard 4.1 Failure to Preserve the Client's Property is applicable to Mr. Lassen's violation of ER 1.15. *Standard* 4.11 provides:

> Disbarment is generally appropriate when a lawyer knowingly converts client property and causes injury or potential injury to a client.

Standard 7.0, *Violations of Duties Owed as a Professional*, is applicable to Mr. Lassen's violations of E.R.s 1.16(d), 5.5, 8.1, 8.2 and Rule 54(d). *Standard* 7.1 provides:

> Disbarment is generally appropriate when a layer knowingly engages in conduct that is a violation of a duty owed as a professional with the intent to obtain a benefit

> for the lawyer or another, and causes serious or potentially serious injury to a client, the public, or the legal system.

Standard 8.1, *Prior Disciplinary Orders*, is applicable to Mr. Lassen's violation of Rule 72, Ariz. R. Sup. Ct. *Standard* 8.1 provides Disbarment is generally appropriate when a lawyer:

> (a) Intentionally or knowingly violates the terms of a prior disciplinary order and such violation causes injury or potential injury to a client, the public, the legal system or the profession; or
> (b) Has been suspended for the same or similar misconduct, and intentionally or knowingly engages in further acts of misconduct that causes injury or potential injury to a client, the public, the legal system, or the profession.

Mr. Lassen was suspended and disbarred for similar rule violations and he knowingly, if not intentionally violated the prior disciplinary orders by not notifying clients and others of his membership status required by Rule 72, Ariz. R. Sup. Ct.

Standard 6.2, Abuse of the Legal Process is applicable to Mr. Lassen's violations of E.R.s 3.2 and 8.4(d). *Standard* 6.21 provides:

> Disbarment is generally appropriate when a lawyer knowingly violates a court order or rule with the intent to obtain a benefit for the lawyer or another, and causes serious injury or potentially serious injury to a party, or causes serious or potentially serious interference with a legal proceeding.

In Count Four, Mr. Lassen never informed his client or the Court of his May 7, 2014, suspension causing actual injury to his client, the legal system, and the profession. Mr. Lassen's client was actually injured in that his lawsuit was delayed as the Court had to excuse Mr. Lassen for practicing while suspended. This delay caused serious interference with the lawsuit and caused wasted resources for the legal system. Further, the breaching of his most fundamental responsibilities in a way that

negatively and severely impacts client interests significantly harms the profession in general.

Mr. Lassen breached his most fundamental duty to the public, which is to maintain personal honesty and integrity. Mr. Lassen also breached his most fundamental duty to his clients, which is to advocate on behalf of their interests. Not just the misconduct, but also the degree of the harm caused by this misconduct is to be considered. *Matter of Scholl*, 200 Ariz. 222, 224, 25 P.3d 71, 712 (1990). His misconduct caused serious harm to his clients and their interests. Not only did his clients suffer, but the breaching of his most fundamental responsibilities significantly harms the legal profession and general public. Such activities create public mistrust and a cynicism against the legal profession. As such, Mr. Lassen's actions caused a severe degree of harm to clients, the public, and the profession in general.

The State Bar has requested restitution on behalf of clients Bejarano and Riccio, however, the Panel determined that fee arbitration or a malpractice action would be the best venue to determine the value, if any, of the legal services performed by Mr. Lassen.

AGGRAVATION AND MITIGATION

The Panel determined that the following aggravating factors are supported by the record:

- *Standard* 9.22(a) (prior disciplinary offense). Mr. Lassen prior disciplinary offenses are as follows:

  Mr. Lassen was suspended for 18 months effective May 7, 2014, in PDJ 2013-9068 for violating ERs 1.4(a)(3), (4) ad 1.16(d), 5.5 and 8.4(c).

  Mr. Lassen was disbarred effective August 28, 2014 in PDJ 2014-9026 for violating ERs 1.1, 1.2, 1.4(a), 1.3, 1.5(a) 1.16, 3.1, 3.2, 3.3, 3.4, 5.5, 8.1, 8.4(c) and (d) and Rule 54(d)(2) Restitution was also imposed.

Pursuant to an Agreement for Discipline by Consent, a 30 day suspension effective April 28, 2012, was imposed in PDJ 2011-9079 for violating ERs 1.3, 1.4(a), 1.4(b), 1.5(b), 2.1, 8.1 and 8.4(c).

Effective December 14, 2009, Respondent was censured and placed on one year probation (MAP) in File 06-1529 for violating ER 8.4(b) and Rules 53(h)(1). Mr. Lassen pled no contest and was found guilty of extreme DUI, endangerment and leaving the scene of an injury accident. He was placed on probation for three years beginning November 7, 2006, and required to serve 10 days in the county jail on work release.

- *Standard* 9.22(b) (dishonest or selfish motive). Mr. Lassen represented clients in Counts One, Three, and Four while suspended without regard for clients or the Court's welfare.

- *Standard* 9.22(c) (pattern of misconduct). Mr. Lassen's lack of diligence and reasonable communication is prevalent in Counts One and Two. Further, Mr. Lassen did not inform his clients of the Courts of his suspension and practiced law while suspended in Counts One, Three, and Four.

- *Standard* 9.22(d) (multiple offenses). There are four counts against Mr. Lassen with violations of thirteen ethical rules.

- *Standard 9.22(g)* (refusal to acknowledge wrongful nature of conduct). Nowhere in Mr. Lassen's testimony does he acknowledge his wrongdoing. Further, Mr. Lassen never responded to multiple requests from the State Bar for information regarding the allegations.

- *Standard* 9.22(i) (substantial experience in the practice of law). Mr. Lassen has practiced law for thirty-seven (37) years, as he was admitted to practice alaw in Arizona in 1978.

- *Standard* 9.22(j) (indifference to making restitution).

Mr. Lassen presented no mitigating factors in this matter, therefore, the Panel finds none are present.

VII. CONCLUSION

The object of lawyer discipline is not to punish the lawyer, but to protect the public, the profession and the administration of justice. *In re Peasley,* 208 Ariz. 27, 38, 90 P.3d 764, 775 (2004). Based on the facts, conclusions of law, and application

of the *Standards*, including aggravating factors, the Panel determined that disbarment is the appropriate sanction. Accordingly,

IT IS ORDERED Mr. Lassen is disbarred from the practice of law effective the date of this Decision and Order.

IT IS FURTHER ORDERED Mr. Lassen shall initiate fee arbitration proceedings with clients Susan Bejarano and Gregory Riccio within ten (10) days from the date of this Decision. Mr. Lassen shall thereafter timely comply with any fee arbitration award.

IT IS FURTHER ORDERED that Mr. Lassen shall pay costs and expenses in this matter.

A final judgment and order will follow.

DATED this 18th day of May, 2015.

William J. O'Neil

William J. O'Neil, Presiding Disciplinary Judge

CONCURRING

Anne B. Donahoe

Anne Donahoe, Volunteer Public Member

Harlan J. Crossman

Harlan Crossman, Volunteer Attorney Member

COPY of the foregoing e-mailed/mailed
this 18th day of May, 2015, to:

Craig Henley
State Bar of Arizona
4201 N. 24th Street, Suite 100
Phoenix, AZ 85016-6266
Email: lro@staff.azbar.org

Gary L. Lassen
1234 South Power Road, Suite 254
Mesa, Arizona 85206-3761
Email: gary@gllplc.com
Respondent

Lawyer Regulation Records Manager
State Bar of Arizona
4201 N. 24th Street, Suite 100
Phoenix, Arizona 85016-6266

by: JAlbright

SUPREME COURT OF ARIZONA

In the Matter of a Disbarred Member of the State Bar of Arizona	Arizona Supreme Court No. SB-15-0035-AP
GARY L. LASSEN, Attorney No. 5259	Office of the Presiding Disciplinary Judge No. PDJ20149082
Respondent.	**FILED 12/04/2015**

DECISION ORDER

Pursuant to Rule 59, Rules of the Supreme Court, Respondent Gary L. Lassen appealed the hearing panel's findings and imposition of disbarment. The Court has considered the parties' briefs and the record in this matter.

The Court accepts the panel's determinations as to the charged ethical violations with one exception. The Court rejects the panel's determination in Count Four that Lassen violated ER 1.4.

With respect to the sanction, the Court affirms the imposition of disbarment and the assessment of costs and expenses of the discipline proceeding.

IT IS ORDERED affirming the decision and sanction of the hearing panel as set forth in this order.

DATED this 4th day of December, 2015.

The foregoing instrument is a full, true and correct copy of the original on file in this office.

ATTEST _____
Janet Johnson, Clerk of the Supreme Court
State of Arizona
By Karen Dekker Deputy

/s/
SCOTT BALES
Chief Justice

Exhibit
8

TO:
Gary L Lassen
Craig D Henley
Jennifer Albright
Sandra Montoya
Maret Vessella
Don Lewis
Beth Stephenson
Perry Thompson
Mary Pieper
Netz Tuvera
Lexis Nexis

STATE BAR OF TEXAS

Office of the Chief Disciplinary Counsel

March 4, 2016

Ms. Christine McKeeman
Board of Disciplinary Appeals
Supreme Court of Texas
P. O. Box 12426
Austin, Texas 78711

Via e-filing filing@txboda.org

Re: *In the Matter of Gary L. Lassen, State Bar Card No. 11969500,* Before the Board of Disciplinary Appeals, Appointed by the Supreme Court of Texas

Dear Ms. McKeeman:

Attached please find the Petition for Reciprocal Discipline of Respondent, Gary L. Lassen. Please file the original Petition with the Board. Additionally, please file-mark and acknowledge the cause number and return a copy to me.

Pursuant to Rule 9.02 of the Texas Rules of Disciplinary Procedure, request is hereby made that the Board issue a show cause order directing Respondent to show cause within thirty (30) days from the date of the mailing of the notice why the imposition of the identical discipline upon Respondent in this State would be unwarranted.

Thank you for your assistance in this matter. Please do not hesitate to call if you have any questions.

Sincerely,

Judith Gres DeBerry
Assistant Disciplinary Counsel
State Bar of Texas

JGD/smh

BEFORE THE BOARD OF DISCIPLINARY APPEALS
APPOINTED BY
THE SUPREME COURT OF TEXAS

IN THE MATTER OF	§	
GARY L. LASSEN	§	**CAUSE NO. _____**
STATE BAR CARD NO. 11969500	§	

PETITION FOR RECIPROCAL DISCIPLINE

TO THE BOARD OF DISCIPLINARY APPEALS:

Petitioner, the Commission for Lawyer Discipline (hereinafter called "Petitioner"), brings this action against Respondent, Gary L. Lassen, (hereinafter called "Respondent"), showing as follows:

1. This action is commenced by Petitioner pursuant to Part IX of the Texas Rules of Disciplinary Procedure. Petitioner is also providing Respondent a copy of Section 7 of this Board's Internal Procedural Rules, relating to Reciprocal Discipline Matters.

2. Respondent is a member of the State Bar of Texas and is licensed but not currently authorized to practice law in Texas. Respondent may be served with a true and correct copy of this Petition for Reciprocal Discipline at Gary L. Lassen, 8854 E. Lost Gold Circle, Gold Canyon, Arizona 85118.

In the Matter of a Member of the State Bar of Arizona,
Gary L. Lassen, Bar No. 005259, Respondent
PDJ-2014-9026

3. On or about March 24, 2014, a Complaint (Exhibit 1) was filed Before the Presiding Disciplinary Judge of the Supreme Court of Arizona in a matter styled, *In the Matter of a Member of the State Bar of Arizona, Gary L. Lassen, Bar No. 005259, Respondent*, PDJ-2014-9026, State Bar No. 11-3805, 13-0301, 13-1205, 13-2214, 13-3323.

4. On or about August 28, 2014, a Report and Order Imposing Sanctions (Exhibit 2) was filed in the Supreme Court of the State of Arizona Before the Office of the Presiding Disciplinary Judge in a matter styled, *In the Matter of a Suspended Member of the State Bar of Arizona, Gary L. Lassen, Bar No. 005259, Respondent,* PDJ-2014-9026, State Bar Nos. 11-3805, 13-0301, 13-1205, 13-2214, 13-3323, that states in pertinent part as follows:

...IT IS ORDERED:

Mr. Lassen is disbarred from the practice of law effective immediately....

5. Respondent appealed the hearing panel's findings and imposition of a disbarment and on or about March 20, 2015, a Decision Order (Exhibit 3) was entered in the Supreme Court of Arizona in a matter styled, In *the Matter of a Suspended Member of the State Bar of Arizona, Gary L. Lassen, Bar No. 5259, Respondent,* Arizona Supreme Court No. SB-14-0048-AP, Office of the Presiding Disciplinary Judge No. PDJ20149026, that states in pertinent part as follows:

> ...With respect to the sanction, the Court affirms the imposition of disbarment, restitution, and costs and expenses of the discipline proceeding.
>
> IT IS ORDERED affirming the decision and sanction of the hearing panel as set forth in this order....

6. In the Decision Order, the Court accepted, with respect to **Count One**, the panel's determination that Respondent violated ERs **1.1** (competence), **3.1** (meritorious claims and contentions), and **8.4(d)** (conduct prejudicial to the administration of justice).

In the Decision Order, the Court accepted, with respect to **Count Two**, the panel's determination that Respondent violated ERs **1.2** (scope of representation), **1.4(a)** (communication), **1.5(a)** (fees), **1.16** (terminating representation), **5.5** (unauthorized practice of law), and **8.4(c)** (conduct involving dishonesty, fraud, deceit or misrepresentation.]

In the Decision Order, the Court accepted, with respect to **Count Three**, the panel's determination that Respondent violated ERs **1.1** (competence), **1.2** (scope of representation), **1.3**

(diligence), **1.4** (communication), **3.2** (expediting litigation), and **8.4(d)** (conduct prejudicial to the administration of justice).

In the Decision Order, the Court accepted, with respect to **Count Four**, the panel's determination that Respondent violated ERs **1.3** (diligence), **3.1** (meritorious claims and contentions), **3.3** (candor towards the tribunal), **3.4** (fairness to opposing party and counsel), and **8.4(d)** (conduct prejudicial to the administration of justice) .

In the Decision Order, the Court accepted, with respect to **Count Five**, the panel's determination that Respondent violated ERs **1.1** (competence), **1.3** (diligence), **3.2** (expediting litigation), **8.1** (knowingly failure to respond to lawful demand for information from a disciplinary authority), **8.4(d)** (conduct prejudicial to the administration of justice) and **Rule 54(d)(2)** (failure to promptly respond to request by the disciplinary authority).

Copies of the Complaint, Report and Order Imposing Sanctions and Order and Decision are attached hereto as Petitioner's Exhibits 1 through 3, and made a part hereof for all intents and purposes as if the same were copied verbatim herein. Petitioner expects to introduce certified copies of Exhibits 1 through 3 at the time of hearing of this cause.

In the Matter of a Disbarred Member of the State Bar of Arizona,
Gary L. Lassen, Bar No. 005259, Respondent,
PDJ-2014-9082

7. On or about September 22, 2014, a Complaint (Exhibit 4) was filed Before the Presiding Disciplinary Judge of the Supreme Court of Arizona in a matter styled, *In the Matter of a Disbarred Member of the State Bar of Arizona, Gary L. Lassen, Bar No. 005259, Respondent*, PDJ-2014-9082, State Bar Nos. 14-0401 and 14-0784.

8. On or about December 24, 2014, a Motion to Amend Initial Complaint with Proposed First Amended Complaint attached (Exhibit 5) was filed Before the Presiding Disciplinary Judge of the Supreme Court of Arizona in a matter styled, *In the Matter of a Disbarred*

Member of the State Bar of Arizona, Gary L. Lassen, Bar No. 005259, Respondent, PDJ-2014-9082, State Bar Nos. 14-0401 and 14-0784.

9. On or about January 5, 2015, an Order Granting Motion to Amend Complaint and Continuing Hearing Date (Exhibit 6) was filed in the Supreme Court of the State of Arizona Before the Presiding Disciplinary Judge of the Supreme Court of Arizona in a matter styled, *In the Matter of a Disbarred Member of the State Bar of Arizona, Gary L. Lassen, Bar No. 005259, Respondent*, PDJ-2014-9082, State Bar No. 14-0401 and 14-0784.

10. On or about May 18, 2015, a Decision and Order Imposing Sanctions (Exhibit 7) was filed Before the Presiding Disciplinary Judge in a matter styled, *In the Matter of a Disbarred Member of the State Bar of Arizona, Gary L. Lassen, Bar No. 005259, Respondent,* PDJ-2014-9082, State Bar Nos. 14-0401, 14-0784, 14-2071, and 14-2297, that states in pertinent part as follows:

> ...IT IS ORDERED Mr. Lassen is disbarred from the practice of law effective the date of this Decision and Order....

11. In the Decision and Order Imposing Sanctions, the Panel found clear and convincing evidence that Respondent violated ERs **1.2** (failure to abide to client's decisions), **1.3** (diligence), **1.4** (communication), **1.5** (unreasonable fees), **1.15** (failure to return unreasonable fees), **1.16(d)** (failure to properly withdraw representation, **3.2** (failure to make reasonable efforts to expedite litigation), **8.1** (failure to respond to lawful demand for information from the disciplinary authority), **8.4(c)** (conduct involving dishonesty, fraud, deceit, or misrepresentations), **8.4(d)** (conduct prejudicial to the administration of justice), **Rule 54(d)** (refusal to cooperate with bar counsel), and **Rule 72** (failure to notify opposing counsel and court of suspension).

12. Respondent appealed the hearing panel's findings and imposition of a disbarment and on or about December 14, 2015, a Decision Order (Exhibit 8) was entered in the Supreme

Court of Arizona in a matter styled, In *the Matter of a Disbarred Member of the State Bar of Arizona, Gary L. Lassen, Bar No. 5259, Respondent,* Arizona Supreme Court No. SB-15-0035-AP, Office of the Presiding Disciplinary Judge No. PDJ20149082, that states in pertinent part as follows:

> ...The Court accepts the panel's determinations as to the charged ethical violations with one exception. The Court rejects the panel's determination in Count Four that Lassen violated ER 1.4.
> With respect to the sanction, the Court affirms the imposition of disbarment and the assessment of costs and expenses of the discipline proceeding.
>
> IT IS ORDERED affirming the decision and sanction of the hearing panel as set forth in this order....

Copies of the Complaint, Motion to Amend Initial Complaint, Order Granting Motion to Amend Complaint and Continuing Hearing Date, Decision and Order Imposing Sanctions and Decision Order are attached hereto as Petitioner's Exhibits 4 through 8, and made a part hereof for all intents and purposes as if the same were copied verbatim herein. Petitioner expects to introduce certified copies of Exhibits 4 through 8 at the time of hearing of this cause.

13. Petitioner prays that, pursuant to Rule 9.02, Texas Rules of Disciplinary Procedure, that this Board issue notice to Respondent, containing a copy of this Petition with exhibits, and an order directing Respondent to show cause within thirty (30) days from the date of the mailing of the notice, why the imposition of the identical discipline in this state would be unwarranted. Petitioner further prays that upon trial of this matter that this Board enters a judgment imposing discipline identical with that imposed by the Supreme Court of Arizona and that Petitioner have such other and further relief to which it may be entitled.

Respectfully submitted,

Linda A. Acevedo
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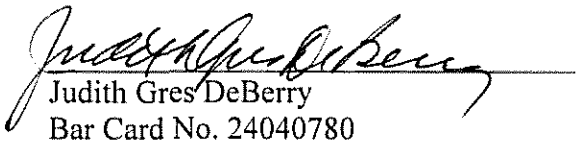

Judith Gres DeBerry
Bar Card No. 24040780
ATTORNEYS FOR PETITIONER

CERTIFICATE OF SERVICE

I certify that upon receipt of the Order to Show Cause from the Board of Disciplinary Appeals, I will serve a copy of this Petition for Reciprocal Discipline and the Order to Show Cause on Gary L. Lassen by personal service.

Gary L. Lassen
8854 E. Lost Gold Circle
Gold Canyon, Arizona 85118

Judith Gres DeBerry

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BEFORE THE PRESIDING DISCIPLINARY JUDGE
OF THE SUPREME COURT OF ARIZONA

IN THE MATTER OF A MEMBER OF THE STATE BAR OF ARIZONA,	**PDJ-2014-** 9026
GARY L. LASSEN **Bar No. 005259**	**COMPLAINT**
Respondent.	State Bar Nos. 11-3805, 13-0301, 13-1205, 13-2214, 13-3323

Complaint is made against Respondent as follows:

GENERAL ALLEGATIONS

1. At all times relevant, Respondent was a lawyer licensed to practice law in the State of Arizona having been first admitted to practice on April 22, 1978.

2. By Final Judgment and Order dated March 13, 2014, Respondent was suspended in PDJ-2013-9068 for a period of Two (2) Years effective May 7, 2014 for violating Rule 42, Arizona Rules of Supreme Court, ERs 1.3, 1.4, 1.5, 1.16, 3.1, 3.2, 5.5, 8.4(c), 8.4(d) and Rule 54(c), Arizona Rules of Supreme Court.

3. A notice of appeal was timely filed on behalf of Respondent and the court denied a motion to stay the execution of the sanction.

4. By Agreement for Discipline by Consent, Respondent was suspended in PDJ-2012- for a period of Thirty (30) Days effective April 28, 2012 for violating Rule

Exhibit
1

42, Arizona Rules of Supreme Court, ERs 1.3, 1.4(a)(2)-(4), 1.4(b), 2.1, 8.1, 8.4(c). Respondent was reinstated on June 25, 2012.

5. By Final Judgment and Order dated December 14, 2009, Respondent was censured (currently, reprimand) and placed on probation for a conviction of extreme DUI, endangerment and leaving the scene of an injury accident in violation of Rule 42, Arizona Rules of Supreme Court, ER 8.4(b), and Rule 53(h)(1), Arizona Rules of Supreme Court.

COUNT ONE (File no. 11-3805/Segal)

6. The Hackberry Elementary School District (the District), acting through its governing board (Board), hired Bradly Ellico (Ellico) as an administrator/principal for a three (3) year term commencing on July 1, 2008.

7. Shortly thereafter, relations between Ellico, individual Board members and parents of District students became strained and the Board ultimately placed Ellico on non-disciplinary paid administrative leave pending completion of an investigation.

8. On November 11, 2009, the Board adopted a statement of charges to terminate Ellico upon the completion of the investigation.

9. In 2009, Respondent initiated a lawsuit against the District, the Board and various members of the Board, in the Mohave County Superior Court case of Ellico v. Hackberry, Case No. 2009-01666 (hereinafter referred to as "2009 Litigation").

10. On July 15, 2011, Ellico initiated a lawsuit against the District, the Board, various members of the Board, and/or Counsel for the named defendants, specifically, Robert D. Haws (Haws) and Gust Rosenfeld, P.L.C. (the Firm) in the

Mohave Superior Court case of Ellico v. Hackberry, Case No. 2011-01182 (hereinafter referred to as "2011 Litigation").

2009 Litigation

11. Attorney Haws and the Firm were retained as defense counsel pursuant to an insurance policy issued by the Arizona Risk Retention Trust for the benefit of the school district.

12. Respondent sought to remove Attorney Haws and Gust Rosenfeld alleging a conflict of interest. The issue was briefed and argued to the trial court.

13. By minute entry of January 8, 2010 [incorrectly dated January 8, 2009], the trial court denied the motion to disqualify.

14. On February 9, 2010, the trial court dismissed a majority of the claims set forth in the Amended Verified Complaint and set an evidentiary hearing on the sole surviving claim, which was for injunctive relief.

15. In June 2010, the trial court held an evidentiary hearing on the issue of the requested injunctive relief and on September 10, 2010, it issued an order and judgment wherein the trial court found a technical violation by the Board of the Open Meetings Law and ordered the Deputy Mohave County Attorney to provide the Board members with training on the Open Meetings Law.

16. Respondent filed a notice of appeal from the trial court's order on behalf of Mr. Ellico resulting in Ellico v. Hackberry, 1 CA-CV 10-0769.

17. On August 7, 2012, the Arizona Court of Appeals, Division One, issued its memorandum decision (the Decision) in which it affirmed, among other things, the trial court's order denying Mr. Ellico's motion to disqualify counsel.

18. On appeal, Respondent argued that the trial court was required to grant the motion to disqualify because of a conflict of interest between the Board and two of its members under to ER 1.7.

19. The Court of Appeals first observed that Ellico would have standing to challenge the defendant's choice of counsel only if Ellico himself had been counsel's past or current client.

20. However, Ellico did not allege that he ever had an attorney-client relationship with defense counsel and he did not allege that the case presented an "extreme circumstance[]" that would otherwise enable him to raise such a challenge as contemplated under *Romley*.

21. The Court of Appeals also noted in a footnote that Respondent seemed to argue that Ellico was entitled to disqualify counsel based on an improper use of public monies to pay for the representation, however he did not cite to any place in the record that showed that public monies had been used for such a purpose.

22. The Court of Appeals also identified numerous deficiencies in Respondent's briefing including, but not limited to:

a. Respondent failed to develop any argument regarding the defendants' failure to file an answer to the complaint filed in the case. Instead, he "simply reiterate[d] the underlying merits of his case, and he appears to generally object to orders made by the trial court."

b. Respondent filed an amended brief that "contains misrepresentations of the record," and "fails in many respects to otherwise comport with the Arizona Rules of Civil Appellate Procedure (ARCAP)." The Court

found this to be "especially troubling" because the Court had struck Respondent's original brief for failure to comply with those rules.

c. Respondent requested relief that was "improper in civil appellate practice." For example, he asked the Court to order the removal of certain of the Board members from their positions.

23. Finally, the Court of Appeals granted the Appellees their costs and reasonable fees as provided for in ARCAP 21, stating as follows:

> The record reveals that Ellico commenced and continued this litigation primarily for delay and harassment, and he unreasonably expanded the proceedings by seeking to disqualify opposing counsel. Further, his brief unreasonably failed to comply with ARCAP 13(a). Even after his opening brief was struck for failure to comply with ARCAP, his subsequent brief did not comply with ARCAP.

2011 Litigation

24. On October 3, 2011, Respondent filed an Amended Verified Complaint in the 2011 Litigation in which he added additional claims for damages.

25. Respondent also added Haws and the Firm as defendants in the Amended Complaint did not include any specific factual allegations against Haws and the Firm.

26. Respondent did not serve Haws or the Firm with the Complaint.

27. Because Respondent named Haws and the Firm as defendants in the Amended Verified Complaint, the Firm did not represent the Board or any of the Board members in the 2011 Litigation.

28. After answering the Amended Complaint, the opposing parties filed motions for judgment on the pleadings.

29. In response, Respondent filed their own motion for judgment on the pleadings, motion for summary judgment and a motion to disqualify the Board's attorneys attorney based upon allegations of a conflict of interest.

30. The trial court denied the disqualification motion and dismissed Ellico's claims with prejudice and awarded the opposing parties their attorney's fees and costs.

31. Respondent filed a notice of appeal from the trial court's order on behalf of Mr. Ellico resulting in Ellico v. Hackberry, 1 CA-CV 13-0025.

32. On February 4, 2014, the Arizona Court of Appeals, Division One, issued its memorandum decision (the Decision) in which it affirmed, among other things, the trial court's order denying Mr. Ellico's motion to disqualify counsel and the trial court's determination that Ellico's claims were barred for the failure to comply with the Notice of Claim statutes governing Ellico's claims.

33. The Court of Appeals further found that "Ellico's continued pursuit of waived claims lacks substantial justification and has unreasonably expanded this litigation."

34. Finally, the Court of Appeals awarded the opposing parties attorney's fees and costs pursuant to Arizona Revised Statute §12-349(B) and allocated the award equally between Ellico and Respondent.

35. In his response to bar counsel's screening letter, Respondent included copies of the briefs that he filed in the appeal from the trial court orders entered in the 2009 Litigation, which Respondent claims "addresses this issue in full"—this

issue being the alleged unethical impropriety of Haws' and the Firm's representation of the Board and the various Board members which the Court of Appeals ultimately disagreed.

36. By engaging in the above-referenced conduct, Respondent violated a number of ethical rules including, but not limited to the following:

A. Rule 42, Ariz. R. Sup. Ct., ER 1.1 (Competence) as Respondent's appellate brief in 1 CA-CV 10-0769 unreasonably failed to comply with the requirements of ARCAP 13(a), even after the Arizona Court of Appeals struck Respondent's opening brief and he was given another opportunity to file the brief. Similarly, Respondent inexplicably pursued statutorily barred claims which failed as a result of the failure to comply with the Notice of Claim statutes.

B. Rule 42, Ariz. R. Sup. Ct., ER 3.1 (Meritorious Claims and Contentions) as Respondent prepared and filed a complaint and amended complaint in 2009, both of which were dismissed by the trial court as having no basis in fact or law. Respondent then filed, not one, but two appellate briefs that "unreasonably failed" to comply with ARCAP 13(a). As a result, the Court of Appeals awarded the appellees their costs and fees, which were equally allocated between the Respondent and his client. Regarding the 2011 Litigation, Respondent again named the defendants' counsel and the Firm as defendants in an effort to disqualify them as counsel, when there was no basis in fact or law to do so. Finally, Respondent inexplicably pursued statutorily barred claims

and unreasonably expanded the litigation by appealing the trial court's rulings regarding the failure to comply with the Notice of Claim statutes and erroneous attempt to disqualify the attorneys in the 2011 Litigation.

C. Rule 42, Ariz. R. Sup. Ct., ER 3.3(a)(1) (Candor Toward the Tribunal) as Respondent filed an amended brief with the Arizona Court of Appeals that misrepresented the record and failed to comply with the requirements of ARCAP. This, despite that the Court of Appeals struck Respondent's original brief for failure to comply with the rules and gave him an opportunity to correct the deficiencies by filing an amended brief.

D. Rule 42, Ariz. R. Sup. Ct., ER 4.1(a) (Truthfulness in Statements to Others) as Respondent filed an amended brief with the Arizona Court of Appeals that misrepresented the record and failed to comply with the requirements of ARCAP. This, despite that the Court of Appeals struck Respondent's original brief for failure to comply with the rules and gave him an opportunity to correct the deficiencies by filing an amended brief.

E. Rule 42, Ariz. R. Sup. Ct., ER 8.4(c) (Misconduct) as Respondent filed an amended brief with the Arizona Court of Appeals that misrepresented the record and failed to comply with the requirements of ARCAP. This, despite that the Court of Appeals struck Respondent's original brief for failure to comply with the

rules and gave him an opportunity to correct the deficiencies by filing an amended brief.

F. Rule 42, Ariz. R. Sup. Ct., ER 8.4(d) (Misconduct) as Respondent prepared and filed a complaint and amended complaint in 2009, both of which were dismissed by the trial court as having no basis in fact or law. Respondent then filed, not one, but two appellate briefs that "unreasonably failed" to comply with ARCAP 13(a). As a result, the Court of Appeals awarded the appellees their costs and fees, which were equally allocated between the Respondent and his client. Regarding the 2011 Litigation, Respondent again named the defendants' counsel and the Firm as defendants in an effort to disqualify them as counsel, when there was no basis in fact or law to do so. Finally, Respondent inexplicably pursued statutorily barred claims and unreasonably expanded the litigation by appealing the trial court's rulings regarding the failure to comply with the Notice of Claim statutes and erroneous attempt to disqualify the attorneys in the 2011 Litigation.

COUNT TWO (File no. 13-0301/Deese)

37. By and between January 2008 and July 2012, Respondent represented Complainant in a contingency fee representation regarding a dispute with Wells Fargo Bank.

38. As part of the representation, Respondent required a Seven Thousand Five Hundred Dollar ($7500.00) non-refundable retainer.

39. By letter dated January 21, 2008, Respondent explained that the non-refundable deposit or fee is for "the filing cost and service of process fee attendant to initiating a lawsuit against Wells Fargo and named individuals." The letter further explained that "[s]ubsequent fees and costs particularly those of expert witnesses are the client's responsibility and should be paid as they are incurred."

40. Respondent filed the United States Federal Court lawsuit of *Deese v. Wells Fargo Bank, et.al.*, CV-08-00539.

41. In or around July 10, 2009, Respondent provided Complainant with billing records detailing the legal services purportedly performed in January and February 2008 along with the fees and costs associated with those services. The total bill was Seven Thousand Five Hundred Dollar ($7500.00), leaving a balance of zero.

42. Over the course of the representation, Respondent provided Complainant with billing records detailing the purported costs incurred during the representation.

43. Over the course of the representation, Complainant paid Respondent no less than Thirty Two Thousand Dollars ($32,000.00) for purported costs and expenses.

44. On or before June 1, 2010, Complainant requested a full accounting of all money paid to Respondent.

45. Respondent's legal assistant, Stephanie Somplack, provided Complainant with billing records by e-mail and indicated that she intended to perform a thorough audit of the billing records.

46. The billing records contained a number of repeated, omitted or disputed costs including, but not limited to, a double billing for a Mediation Fee to Scott and Skelly in the amount of One Thousand Eight Hundred Sixty Seven Dollars and 50 ($1867.50), legal fees of One Hundred Forty Seven Dollar and 50/100 ($147.50) incurred for reviewing the transcript of a deposition, fees and costs of Two Thousand Six Hundred Forty Nine Dollars and 95/100 ($2649.95) associated with one expert John V. Scialli, a One Thousand Fifty Dollar ($1050.00) "prepayment" associated with a purported deposition of Dr. Nelson-Spiers, a Two Hundred Three Dollar ($203.00) payment for a purported video deposition of Travis Clements and a One Thousand Dollar ($1000.00) payment to a Barry W. Linden which evidenced by a check drawn on the law firm's operating bank account but does not appear on any of the accountings provided to Complainant.

47. On or about October 13, 2010, Respondent filed an appeal with the Ninth Circuit of the United States Court of Appeal after receiving an unfavorable ruling on a motion for summary judgment in the trial court.

48. By e-mail dated May 10, 2011, Complainant requested a copy of the depositions of two individuals including Travis Clements.

49. Despite repeated demands, Complainant has not been provided with a copy of the video deposition of Travis Clements.

50. In his initial response to the State Bar, Respondent acknowledges that he did not purchase the video deposition of Travis Clements and was therefore unable to provide Complainant with a copy.

51. In or around December 12, 2011, the Ninth Circuit of the United States Court of Appeal upheld the unfavorable ruling on a motion for summary judgment of the lower court.

52. In March 2012, Respondent entered into an Agreement for Discipline by Consent requiring Respondent to serve a 30-day Suspension effective April 28, 2012 for violations of 1.3, 1.4(a)(2)-(4), 1.4(b), 2.1, 8.1, 8.4(c).

53. On April 24, 2012, Susan Weber, an attorney and friend of Complainant's, documented a conversation between Complainant and Respondent wherein Complainant informed Respondent that she googled herself and discovered the Ninth Circuit's affirmation of the lower court's unfavorable ruling.

54. The Weber e-mail continues by documenting Respondent's response which was that Respondent received the ruling "a few weeks ago" and that Respondent had been very busy.

55. The Weber e-mail closes with a demand for an accurate accounting of all client funds related to the representation along with the supporting invoices and proofs of payment including, but not limited to:

a. Any and all court reporting services;

b. Any and all doctor's reports;

c. Any and all airline tickets and hotel bills for travel;

d. Any and all telephone bills;

e. Any and all photocopying; and

f. Any other miscellaneous expenses such as postage.

56. Later that day, Respondent responded and indicated that he would begin assembling the information.

57. Respondent further claimed that "(he has) been attempting to explore other avenues for further action and wanted a detailed plan of action to lay out for consideration."

58. Still later that day, when asked for further information regarding the "options", Respondent stated "I will respond in detail regarding all options that I have looked into including going to the U.S. Supreme Court and pursuing a separate case against (Complainant's) former supervisor."

59. When asked when they should expect a response, Respondent stated "no later than next week".

60. In an e-mail dated May 3, 2012, Complainant asked Respondent a number of questions including "What have you done on the case since Dec 2011?" and Respondent responded stating "...i am working on the list of options including a separate case against Reede Reynolds. My anger against the Court allowing Wells to escape by doing nothing maked (sic) my blood pressure swell and has caused me to have random anger outbursts."

61. On May 4, 2012, Weber e-mailed Respondent and again requested the accounting to no avail.

62. On May 5, 2012, Complainant e-mailed Respondent acknowledging his stress but again requested information.

63. Later that day, Respondent simply stated "thank you for your concern; I am working on putting the report for you together;".

64. On May 7, 2012, Weber e-mailed Respondent memorializing that Respondent failed to provide the accounting and requested additional information regarding the status of his efforts.

65. Later that day, Respondent again responded that he was "working on a comprehensive report for you both top (sic) be completed this week."

66. Complainant responded later that day asking "You are causing me to have an anxiety attack, I am asking just one more time to answer the freakin question??? What is your problem???"

67. After a back and forth between Weber, Complainant and Respondent, Respondent stated "I will respond with a detailed narrative by week's end, and then I propose we all three have a lengthy conference call to discuss all matters."

68. After being informed that Complainant was scheduled to have major surgery on May 29th, Respondent stated the following in a response e-mail dated May 9, 2012 "My prayers are with you. I will be working most of Friday and Saturday, if necessary, to get you everything we have discussed. I will include a short to the point summary and detail of the legal issues as well. This case and the injustice that has occurred to date is appalling."

69. On May 12, 2012, Respondent e-mailed Complainant and stated the following:

> I have been doing legal research yesterday and am excited about pushing toward a jury trial moving in state court to get away from the 'bitch" judge and get to a trial SOONER.. I am anxious to get this going in court in HJune. (sic) I will still send you the full analysis of the federal discrimination analysis and the advice i received regarding

getting to the Supreme court including pros and cons. Immediacy is what you need and deserve. More to come soon.

70. When asked about details regarding the pursuit of the lawsuit on May 15, 2012, Respondent stated, in part, "I will send update with specific strategy options as discussed in early June."

71. On June 25, 2012, Respondent was reinstated to the practice of law.

72. On July 14, 2012, Complainant terminated Respondent.

73. Later that day, Respondent responded "I am working on your request, and Ii (sic) was already working on the issues and options we discussed in April and May."

74. On December 3, 2012, Weber again requested a full accounting for the legal services and costs purported provided along with any supporting documentation to no avail.

75. On December 31, 2012, Weber again requested a full accounting for the legal services and costs in an e-mail entitled "Still no response from you."

76. Later that day, Respondent responded claiming that he was out with the flu but that he was working on it and will respond "as soon as I can, and in any event, before the 15th."

77. In his initial response to the State Bar dated May 6, 2013, Respondent states that "[t]his was a case in which the costs far exceeded the amount paid by the client" but failed to provide any accounting, explanation or supporting documentation regarding the purported costs incurred during the representation.

78. Respondent further indicated that he intended to provide the State Bar with an "amended, supplemental response.

79. On August 19, 2013, the State Bar requested additional information from Respondent including, but not limited to:

a. "A copy of the representation letter for (Complainant)";

b. "Copies of all invoices/billing statement/time records relating to the representation of (Complainant)";

c. "Copies of all bank statements/client ledgers for your Trust account and relating to the representation of (Complainant) and evidencing all payments made by (Complainant) to you, all payments made by you on her behalf, and the balance, if any, of funds that you currently hold relating to the representation";

d. Correspondence between you and (Complainant) relating to the representation";

e. "The 'amended, supplemental response' that you reference in your May 6th letter, which I have not received";

f. "Answers to the following questions:

i. When did you advise the client that you were suspended?

ii. How did you advise the client of the suspension?

iii. Provide any supporting documentation regarding the manner in which you related this information."

80. On September 3, 2013, Respondent responded by providing a copy of the engagement letter and representation agreement and further explained that he anticipated being interviewed and thought that the production of documents could take place as part of the interviewing process.

81. In his letter dated September 3, 2013, Respondent finally stated "I had assembled information regarding cost expensing and will retrieve that effort and forward it under separate cover letter."

82. In an e-mail to the State Bar dated September 26, 2013, Respondent again indicated that he would send the requested information no later than September 30, 2013.

83. On November 6, 2013, the State Bar sent Karen Clark, Respondent's limited representation attorney in PDJ 2013-9068 (SB Files 11-3770 and 12-2382), a letter referring to all of the prior requests and promises and, again, requested the information.

84. On November 14, 2013, Ms. Clark provided notice to the State Bar that she no longer represented Respondent.

85. On November 22nd, December 12th and December 17th 2013, the State Bar sent Scott Bennett and James Belanger, Respondent's attorneys of record in PDJ 2013-9068 (SB Files 11-3770 and 12-2382), an e-mail requesting a response to the State Bar's prior requests.

86. On December 19, 2013, the State Bar e-mailed and hand-delivered another copy of the above listed requests for information to Respondent and his attorneys of record in PDJ 2013-9068 (SB Files 11-3770 and 12-2382) along with notification that the State Bar would include an ethical violation for Respondent's failure to respond.

87. To date, the State Bar has not received any response from Respondent or any of his prior attorneys.

88. By engaging in the above-referenced conduct, Respondent violated a number of ethical rules including, but not limited to the following:

A. Rule 42, Ariz. R. Sup. Ct., ER 1.2 (Client Authority) as Respondent repeatedly failed to abide by the client's instructions during the representation.

B. Rule 42, Ariz. R. Sup. Ct., ER 1.3 (Diligence) as Respondent consistently failed to act diligently during the representation.

C. Rule 42, Ariz. R. Sup. Ct., ER 1.4(a) (Communication) as Respondent failed to reasonably communicate with the client during the representation.

D. Rule 42, Ariz. R. Sup. Ct., ER 1.5(a) (Fees) as Respondent charged his clients an unreasonable fee for the representation.

E. Rule 42, Ariz. R. Sup. Ct., ER 1.16 (Terminating the Representation) as Respondent failed to take the steps reasonably necessary to protect the client after the termination of the representation.

F. Rule 42, Ariz. R. Sup. Ct., ER 5.5 (Practicing Law Without a License) as Respondent engaged in the practice of law while suspended.

G. Rule 42, Ariz. R. Sup. Ct., ER 8.4(c) (Misconduct) as Respondent frequently engaged in conduct involving dishonesty, fraud, deceit or misrepresentations.

COUNT THREE (File no. 13-1205/Navarrete)

89. In June 2009, Respondent filed an employment discrimination and wrongful termination lawsuit against Wells Fargo Bank on behalf of Complainants.

90. Wells Fargo filed a Motion to Dismiss and Respondent did not respond. After the motion was granted as to one of the claims, Wells Fargo filed an answer to the remaining count and requested attorney's fees and costs.

91. The remaining claim was dismissed without prejudice from the inactive calendar for lack of prosecution.

92. In June 2010, Wells Fargo filed a Motion for an award of attorney's fees and costs against Complainants and Respondent.

93. Respondent did not file a response and in late July, Wells Fargo was awarded attorney's fees and costs in the amount of Forty Four Thousand Nine Hundred Thirty Four Dollars and 80/100 ($44,934.80) against Complainants and Respondent, jointly and severally.

94. In August 2010, Wells Fargo filed a proposed form of judgment which was objected to by Respondent based, in part, on Respondent's mistake or inadvertence in filing a response.

95. Respondent requested a new trial which was denied on November 9, 2010.

96. On January 28, 2011, the court issued an order denying the new trial and reaffirming the judgment of Forty Four Thousand Nine Hundred Thirty Four Dollars and 80/100 ($44,934.80) against Complainants and Respondent.

97. On February 25, 2011, Respondent filed a Notice of Appeal and Division One of the Court of Appeals affirmed the trial court's ruling in all respect.

98. On June 14, 2012, Respondent filed a Notice of Bankruptcy in the lower court.

99. In his August 6, 2013 response to the State Bar, Respondent claims that the Complainants were unsophisticated and unable to provide information necessary to pursue the claim.

100. Respondent further claims that the judge took an "unwarranted position" against he and his clients and claims that he pursued the appeal at his own expense.

101. Finally, Respondent claims that his clients were misled by individuals at the State Bar regarding the status of his license during the representation and claims that "(he) will be providing additional information in separate correspondence addressing the ERs" and "will provide supplemental information in the next day or two regarding more details."

102. On November 8, 2013, the State Bar sent Karen Clark, Respondent's limited representation attorney in PDJ 2013-9068 (SB Files 11-3770 and 12-2382), requesting additional information from Respondent about the status of the affirmed judgment at issue in the Navarette matter and a second unrelated judgment out of the Third Judicial District in Anchorage in the case of Birch, Horton, Bittner, Inc. v. Gary Lassen and Gary Lassen, PLC, 3AN-11-10939 CI.

103. On November 14, 2013, Ms. Clark provided notice to the State Bar that she no longer represented Respondent.

104. On November 25th, December 12th and December 17th 2013, the State Bar sent Scott Bennett and James Belanger, Respondent's attorneys of record in PDJ

2013-9068 (SB Files 11-3770 and 12-2382), an e-mail requesting a response to the State Bar's prior requests.

105. On December 19, 2013, the State Bar e-mailed and hand-delivered another copy of the above listed requests for information to Respondent and his attorneys of record in PDJ 2013-9068 (SB Files 11-3770 and 12-2382) along with notification that the State Bar would include an ethical violation for Respondent's failure to respond.

106. To date, the State Bar has not received any response from Respondent or any of his prior attorneys.

107. By engaging in the above-referenced conduct, Respondent violated a number of ethical rules including, but not limited to the following:

A. Rule 42, Ariz. R. Sup. Ct., ER 1.1 (Competence) as Respondent did not exhibit the knowledge or preparation necessary for the representation.

B. Rule 42, Ariz. R. Sup. Ct., ER 1.2 (Client Authority) as Respondent failed to abide by the client's instructions throughout the representation.

C. Rule 42, Ariz. R. Sup. Ct., ER 1.3 (Diligence) as Respondent failed to act diligently during the representation during the representation.

D. Rule 42, Ariz. R. Sup. Ct., ER 1.4 (Communication) as Respondent failed to reasonably communicate with the client during the representation.

E. Rule 42, Ariz. R. Sup. Ct., ER 1.7(a)(2) as Respondent had a concurrent conflict of interest during the representation.

F. Rule 42, Ariz. R. Sup. Ct., ER 3.1 (Meritorious Claims and Contentions) as Respondent failed to timely file responsive and other pleadings resulting in sanctions being imposed against Respondent and his client.

G. Rule 42, Ariz. R. Sup. Ct., ER 3.2 (Expediting Litigation) as Respondent failed to timely file responsive and other pleadings resulting in sanctions being imposed against Respondent and his client.

H. Rule 42, Ariz. R. Sup. Ct., ER 8.4(d) (Misconduct) as Respondent failed to timely file responsive and other pleadings resulting in sanctions being imposed against Respondent and his client.

COUNT FOUR (File no. 13-2214/Jellison)

108. On April 9, 2012, Respondent filed a complaint on behalf of his client, Andrew Goode, in the Pinal County Superior Court lawsuit of Goode v. Keys, et.al., CV 2012-00959 (hereinafter referred to as "Lawsuit").

109. At all times pertinent, Respondent was the sole attorney of record in the lawsuit.

110. Mr. Goode was injured while working as a Deputy for Pinal County and arresting an individual at a Country Thunder event. The claim was accepted by the Arizona Counties Insurance Pool (hereinafter referred to as "ACIP") as a compensable Workers Compensation claim.

111. As the claim was accepted by ACIP, Respondent and his client had certain statutory obligations pursuant to Arizona Revised Statute § 23-1023.

112. On or about April 12, 2012, James Jellison (hereinafter referred to as "Jellison") notified Respondent that he represented the Pinal County Sheriff's Department.

113. Effective April 28, 2012, Respondent was suspended for Thirty (30) days by consent in SB File 10-1508 for violations of 1.3, 1.4(a)(2)-(4), 1.4(b), 2.1, 8.1, 8.4(c).

114. On June 25, 2012, Respondent was reinstated to the practice of law.

115. On or about August 24, 2012, the Court issued a Notice which set the matter for a Dismissal Hearing without Prejudice on September 25, 2012 due to Respondent's failure to serve the Defendants.

116. On September 24, 2012, Respondent contemporaneously filed a Notice of Change of Judge and Motion to Extend Time For Service.

117. On September 25, 2012, neither Respondent nor his client appeared at the Dismissal Hearing.

118. On September 25, 2012, Jellison entered a special limited appearance and filed affidavits of the individually named Pinal County employees attesting to their availability for service at their publically disclosed business addresses.

119. Based upon the Notice of Change of Judge, the Court referred the case to the Presiding Judge and was reassigned.

120. On October 3, 2012, the Court denied Respondent's Motion to Extend Time for Service and rescheduled the Dismissal Hearing for November 19, 2012.

121. On October 15, 2012, Jellison filed a Motion to Dismiss Pinal County and certain individually named Defendants collectively referred to as the "Pinal County Defendants".

122. On November 8, 2012, Respondent filed a two-page untimely Response to the Pinal County Defendants' Motion to Dismiss. While Respondent explained that Plaintiffs filed supplemental Notices of Claim and intended to file an Amended Complaint, the untimely response did not provide any "good cause" as to why Respondent did not use any efforts to serve the Pinal County Defendants during the 120 day statutory period set forth in Rule 4, Ariz. R. Civ. P. The response also alleges that service of the complaint was completed on certain unspecified Defendants.

123. On November 16, 2012, Respondent filed a First Amended Complaint.

124. On November 19, 2012, the Court held the Dismissal Hearing wherein Respondent admitted that he did not serve the Pinal County Defendants during the statutory period but that by filing an Amended Complaint, the 120 day statutory period is extended or abated. Following oral argument, the Court rejected Respondent's argument and prepared a minute entry dismissing the matter as to the Pinal County Defendants.

125. On December 13, 2012, the Court signed an order stating "that Defendants Pinal County, Pinal County Sheriff's Office, Paul Babeu, Steve Henry, Blake King, Michael Hughley, Brandi Clark and Paul Ahler are dismissed from this action, without prejudice."

126. On February 28, 2013, Respondent filed misdated Applications for Entry of Default against four of the Pinal County Defendants.

127. In support of his applications, Respondent claimed that the Pinal County Defendants were served and failed to answer the First Amended Complaint.

128. The February 2013 pleadings did not result in the entry of default judgments.

129. On June 13, 2013, Respondent filed properly dated Notices of Application for Default, Applications for Entry of Default and sworn "Affidavits On Default" against the same four Pinal County Defendants.

130. The Affidavit pleadings were filed under penalty of perjury and fail to reference the prior dismissal documents, the dismissal hearing or the dismissal order and inaccurately states that the respective Defendants "failed to plead or otherwise defend".

131. The Notice pleadings also failed to reference the prior dismissal documents, the dismissal hearing or the dismissal order and inaccurately stated that the respective Defendants "failed to plead or otherwise defend".

132. The June 2013 pleadings did result in the entry of default judgments against Pinal County, Michael Hughley and Brandi Clark.

133. While included in the mailing certificate of the default pleadings, Jellison did not receive any of the February 28, 2013 or June 13, 2013 default pleadings.

134. On June 14, 2013, Respondent filed a Rule 41 Notice of Dismissal with Prejudice against the private entity.

135. On June 28, 2013, Jellison mailed Respondent a letter acknowledging receipt of the June 14th Rule 41 Notice of Dismissal.

136. Jellison also clarified that, while Complainant was listed in the mailing certificate as "Attorney for Defendants", Jellison only represented the dismissed Pinal County Defendants.

137. On July 11, 2013, Respondent filed Notices of Application for Default, Applications for Entry of Default and sworn "Affidavits On Default" against two Pinal County Defendants.

138. The Affidavit pleadings were filed under penalty of perjury and fail to reference the prior dismissal documents, the dismissal hearing or the dismissal order and inaccurately states that the respective Defendants "failed to plead or otherwise defend".

139. The Notice pleadings also failed to reference the prior dismissal documents, the dismissal hearing or the dismissal order and inaccurately stated that the respective Defendants "failed to plead or otherwise defend".

140. The July 2013 pleadings did result in the entry of default judgments against the two Pinal County Defendants.

141. On July 18, 2013, Jellison wrote Respondent demanding the production of any default pleading or documents as he was unaware of any of Respondent's prior efforts to obtain a default judgment.

142. Jellison further demanded that Respondent file the appropriate paperwork and take all efforts to undo any attempts to obtain a default judgment against any of the Pinal County Defendants.

143. On July 31, 2013, Respondent wrote Jellison stated, in part, the following:

There appears to be some confusion on your part as to the status of the Pinal Defendants. After the court dismissed the original Complaint without prejudice, a new Complaint was filed and timely served on multiple Pinal County Defendants on different dates. To date, no named county defendant has filed an Answer. Other defendants in this matter have also been served, and one settlement has been reached.

It was my intent to get the attention of the Pinal County defendants by initiating the default process. It appears and is confirmed by your letter that there is some confusion among the County Defendants as to their status. Please identify who you represent and I will provide you the service information immediately.

144. On August 6, 2013, Jellison replied stating, in pertinent part, "I...assure you there is now no confusion on my part about what you have done...Your pursuit of default judgments in a case where my clients made a limited appearance and, through that appearance, obtained a dismissal is beyond my comprehension. You failure to send me copies of your Affidavits and Applications when you know I have made a limited appearance in the matter on behalf of these already dismissed Pinal County Defendants is also beyond my comprehension. Your July 31, 2013 letter provides no cogent explanation or justification for your behavior in this regard."

145. On November 7, 2013, the State Bar sent Karen Clark, Respondent's limited representation attorney in PDJ 2013-9068 (SB Files 11-3770 and 12-2382), requesting additional information from Respondent.

146. On November 14, 2013, Ms. Clark provided notice to the State Bar that she no longer represented Respondent.

147. On November 22nd, December 12th and December 17th 2013, the State Bar sent Scott Bennett and James Belanger, Respondent's attorneys of record in PDJ 2013-9068 (SB Files 11-3770 and 12-2382), an e-mail requesting a response to the State Bar's prior requests.

148. On December 19, 2013, the State Bar e-mailed and hand-delivered another copy of the above listed requests for information to Respondent and his attorneys of record in PDJ 2013-9068 (SB Files 11-3770 and 12-2382) along with notification that the State Bar would include an ethical violation for Respondent's failure to respond.

149. To date, the State Bar has not received any response from Respondent or any of his prior attorneys.

150. By engaging in the above-referenced conduct, Respondent violated a number of ethical rules including, but not limited to the following:

A. Rule 42, Ariz. R. Sup. Ct., ER 1.2 (Client Authority) as Respondent failed to abide by the client's instructions during the representation.

B. Rule 42, Ariz. R. Sup. Ct., ER 1.3 (Diligence) as Respondent failed to act diligently during the representation.

C. Rule 42, Ariz. R. Sup. Ct., ER 3.1 (Meritorious Claims and Contentions) as Respondent pursued non-meritorious claims and default judgments.

D. Rule 42, Ariz. R. Sup. Ct., ER 3.3 (Candor Toward the Tribunal) as Respondent knowingly made a false statement of

fact or law to the tribunal regarding Respondent's pursuit of non-meritorious claims and default judgments.

E. Rule 42, Ariz. R. Sup. Ct., ER 3.4 (Fairness to Opposing Party and Counsel) as Respondent filed inaccurate and false pleadings and knowingly disobeyed an obligation under the rules of a tribunal.

F. Rule 42, Ariz. R. Sup. Ct., ER 8.4(d) (Misconduct) as Respondent repeatedly engaged in conduct that was prejudicial to the administration of justice.

COUNT FIVE (File no. 13-3323/Warzynski)

151. The State Bar incorporates all of the allegations in Count 5 as if plead in Count Five.

152. On February 12, 2013, ACIP retained Complainant to address the lien issues and Respondent's violation of Arizona Revised Statute § 23-1023.

153. On April 8, 2013, Complainant filed a Motion to Intervene.

154. On April 18, 2013, Respondent confirmed to Complainant that he settled a portion of the claim without notice to or authorization by ACIP.

155. On May 14, 2013, Complainant met with Respondent and again confirmed that Respondent settled the claims with one of the parties for Twenty Three Thousand Five Hundred Dollars ($23,500.00) without notice to or authorization by ACIP.

156. Between June and October 2013, Complainant and Respondent have written correspondence regarding Respondent's unauthorized settlement and subsequent unaccounted for distribution(s) of the settlement proceeds.

157. On December 5, 2013, the State Bar sent Scott Bennett, Respondent's attorney of record in PDJ 2013-9068 (SB Files 11-3770 and 12-2382) the initial screening letter requesting that Respondent provide the State Bar with a request within twenty days.

158. On January 15, 2014, the State Bar sent Scott Bennett a second letter requesting a response within ten days and notifying Respondent and his attorney that the State Bar would include an additional ethical violation if Respondent failed to respond within the ten day period.

159. To date, the State Bar has not received any response from Respondent or any of his prior attorneys.

160. By engaging in the above-referenced conduct, Respondent violated a number of ethical rules including, but not limited to the following:

A. Rule 42, Ariz. R. Sup. Ct., ER 1.1 (Competence) as Respondent did not provide competent representation to his client as he failed to comply with the statutory requirements in a Workman's Compensation Claim involving an Insurance Pool such as ACIP.

B. Rule 42, Ariz. R. Sup. Ct., ER 1.3 (Diligence) as Respondent consistently failed to act diligently throughout the lawsuit and his representation of his clients.

C. Rule 42, Ariz. R. Sup. Ct., ER 3.1 (Meritorious Claims and Contentions) as Respondent meritless claims and unauthorized defaults on behalf of his clients.

D. Rule 42, Ariz. R. Sup. Ct., ER 3.2 (Expedited Litigation) as Respondent failed to make reasonable efforts to expedite litigation consistent with the interests of his clients.

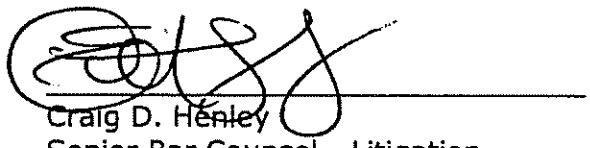
E. Rule 42, Ariz. R. Sup. Ct., ER 5.5 – Respondent engaged in the practice of law as defined by Rule 31, Ariz. R. Sup. Ct., during a period of suspension.

F. Rule 42, Ariz. R. Sup. Ct., ER 8.1 – Respondent knowingly failed to respond to a lawful demand for information by the disciplinary authority.

G. Rule 42, Ariz. R. Sup. Ct., ER 8.4(d) (Misconduct) as Respondent engaged in conduct that was prejudicial to the administration of justice.

H. Rule 54(d)(2) Ariz. R. Sup. Ct., Respondent failed to promptly respond to a request by the disciplinary authority for information relevant to pending charges, complaints or matters under investigation concerning Respondent's conduct.

DATED this _____ day of March, 2014.



Craig D. Henley
Senior Bar Counsel - Litigation

Original filed with the Disciplinary Clerk of
the Office of the Presiding Disciplinary Judge
of the Supreme Court of Arizona
this _____ day of March, 2014.

by:_____
CDH:dds

BEFORE THE ATTORNEY DISCIPLINE PROBABLE CAUSE COMMITTEE OF THE SUPREME COURT OF ARIZONA

IN THE MATTER OF A MEMBER OF THE STATE BAR OF ARIZONA, **GARY L. LASSEN,** **Bar No. 005259** Respondent.	No. 11-3805 **PROBABLE CAUSE ORDER**

The Attorney Discipline Probable Cause Committee of the Supreme Court of Arizona ("Committee") reviewed this matter on December 13, 2013, pursuant to Rules 50 and 55, Ariz. R. Sup. Ct., for consideration of the State Bar's Report of Investigation and Recommendation.

By a vote of 8-0-1[1], the Committee finds probable cause exists to file a complaint against Respondent in File No. 11-3805.

IT IS THEREFORE ORDERED pursuant to Rules 55(c) and 58(a), Ariz. R. Sup. Ct., authorizing the State Bar Counsel to prepare and file a complaint with the Disciplinary Clerk.

Parties may not file motions for reconsideration of this Order.

DATED this 20th day of December, 2013.

Daisy Flores/jmm
Daisy Flores, Vice Chair
Attorney Discipline Probable Cause Committee
of the Supreme Court of Arizona

[1] Committee member Judge Lawrence Winthrop did not participate in this matter.

Original filed this 20th day
of December, 2013, with:

Lawyer Regulation Records Department
State Bar of Arizona
4201 North 24th Street, Suite 100
Phoenix, Arizona 85016-6266

Copy mailed this 23rd day
of December, 2013, to:

Gary L.Lassen
Law Office of Gary Lassen PLLC
1234 South Power Road,
Suite 254
Mesa, Arizona 85206-3761
Respondent

Copy emailed this 23rd day
of December, 2013, to:

Attorney Discipline Probable Cause Committee
of the Supreme Court of Arizona
1501 West Washington Street, Suite 104
Phoenix, Arizona 85007
E-mail: ProbableCauseComm@courts.az.gov

Lawyer Regulation Records Manager
State Bar of Arizona
4201 North 24th Street, Suite 100
Phoenix, Arizona 85016-6266

by: _____

FILED

MAR 21 2014

STATE BAR OF ARIZONA

BY

BEFORE THE ATTORNEY DISCIPLINE PROBABLE CAUSE COMMITTEE OF THE SUPREME COURT OF ARIZONA

IN THE MATTER OF A MEMBER OF THE STATE BAR OF ARIZONA,

GARY L. LASSEN,
Bar No. 005259,

Respondent.

Nos. 13-0301, 13-1205, 13-2214 and 13-3323

PROBABLE CAUSE ORDER

The Attorney Discipline Probable Cause Committee of the Supreme Court of Arizona ("Committee") reviewed these matters on March 14, 2014, pursuant to Rules 50 and 55, Ariz. R. Sup. Ct., for consideration of the State Bar's Report of Investigation and Recommendations.

By a vote of 7-0-2[1], the Committee finds probable cause exists to file a complaint against Respondent in File No's. 13-0301, 13-1205, 13-2214 and 13-3323.

IT IS THEREFORE ORDERED pursuant to Rules 55(c) and 58(a), Ariz. R. Sup. Ct., authorizing the State Bar Counsel to prepare and file a complaint with the Disciplinary Clerk.

Parties may not file motions for reconsideration of this Order.

DATED this 20 day of March, 2014.

Lawrence F. Winthrop

Judge Lawrence F. Winthrop, Chair
Attorney Discipline Probable Cause Committee
of the Supreme Court of Arizona

[1] Committee members Karen E. Osborne and Ben Harrison did not participate in this matter.

Original filed this 25th day
of March, 2014, with:

Lawyer Regulation Records Department
State Bar of Arizona
4201 North 24th Street, Suite 100
Phoenix, Arizona 85016-6266

Copy mailed this 24th day
of March, 2014, to:

Gary L. Lassen
Law Office of Gary Lassen PLLC
1234 South Power Road, Suite 254
Mesa, Arizona 85206-3761
Respondent

Copy emailed this 24th day
of March, 2014, to:

Attorney Discipline Probable Cause Committee
of the Supreme Court of Arizona
1501 West Washington Street, Suite 104
Phoenix, Arizona 85007
E-mail: ProbableCauseComm@courts.az.gov

Lawyer Regulation Records Manager
State Bar of Arizona
4201 North 24th Street, Suite 100
Phoenix, Arizona 85016-6266

by: _____

IN THE
SUPREME COURT OF THE STATE OF ARIZONA
BEFORE THE OFFICE OF THE PRESIDING DISCIPLINARY JUDGE
1501 W. WASHINGTON, SUITE 102, PHOENIX, AZ 85007-3231

IN THE MATTER OF A SUSPENDED MEMBER OF THE STATE BAR OF ARIZONA,

GARY L. LASSEN,
Bar No. 005259

Respondent.

PDJ 2014-9026

REPORT AND ORDER IMPOSING SANCTIONS

[State Bar No. 11-3805, 13-0301, 13-1205, 13-2214, 13-3323]

FILED AUGUST 28, 2014

On July 8, 9, 2014, the Hearing Panel ("Panel"), composed of Michael Snitz, a public member, Ralph Wexler, an attorney member, and the Presiding Disciplinary Judge, William J. O'Neil ("PDJ"), held a two day hearing pursuant to Rule 58(j), Ariz. R. Sup. Ct. Craig D. Henley appeared on behalf of the State Bar of Arizona ("State Bar"). Mr. Lassen appeared pro se. Rule 615 of the Arizona Rules of Evidence, the witness exclusion rule, was invoked. The Panel carefully considered the Complaint, Answer, the parties' Joint Prehearing Statement, Individual Pre-Hearing Memorandum, testimony, including that of Mr. Lassen, admitted exhibits, written closing arguments and proposed findings of fact.[1] The Panel now issues the following "Report and Order Imposing Sanctions," pursuant to Rule 58(k), Ariz. R. Sup. Ct.

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[1] Consideration was also given to sworn testimony of Robert D. Haws, Esq., Julie Deese, Iris Navarrete, Alma Oliva, James M. Jellison, Esq., Michael Warzynski, Esq., Susan Weber, and Susan Strickler.

Exhibit
2

I. SANCTION IMPOSED: DISBARMENT AND COSTS OF THESE DISCIPLINARY PROCEEDINGS

II. BACKGROUND AND PROCEDURAL HISTORY

An Order of Probable Cause was filed in this matter on December 20, 2013 and March 21, 2014. The State Bar filed its five count Complaint on March 24, 2014, alleging violations of ERs 1.1 (competence), 1.2 (scope of representation), 1.3 (diligence), 1.4(a) (communication). 1.5(a) (fees), 1.16 (terminating representation), 1.7(a)(2) (conflict of interest), 3.1 (meritorious claims and contentions), 3.2 (expediting litigation), 3.3(a)(1) (candor towards the tribunal), 3.4 (fairness to opposing party and counsel), 4.1(a) (truthfulness in statements to others) 5.5 (unauthorized practice of law), 8.1 (knowingly failure to respond for a lawful demand for information by a disciplinary authority), 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation), 8.4(d) (conduct prejudicial to the administrative of justice) and Rule 54(d) (failure to promptly respond to request by the disciplinary authority). Mr. Lassen filed his Answer on April 14, 2014, and an initial case management conference was held on April 30, 2014.

The State Bar asserts disbarment and restitution is the appropriate sanction in this matter for Mr. Lassen's failure to timely file pleadings and file pleadings that complied with rule requirements, misleading his clients about the status of their matters and pursuing statutorily barred claims in addition to other misconduct.

Mr. Lassen asserts he was not given due process because the complaint was not sufficiently clear and specific to inform him of the alleged misconduct and his Motion to Dismiss was not substantially addressed. Mr. Lassen further asserts there is no standard of care evidence or expert testimony that he violated an ethical duty to a

third party to which he had no legal obligation, and no evidence was presented to support a lack of good faith basis in fact or law to raise statutory conflicts. [Respondent's Written Closing Argument.] Mr. Lassen requested a directed verdict.

III. FINDINGS OF FACT

Mr. Lassen was licensed to the practice law in the State of Arizona on April 22, 1978. [Joint Prehearing Statement, p. 1.] He is currently on inactive status in Texas. Mr. Lassen filed an appeal and special action regarding his May 7, 2014, suspension, which is pending. The Supreme Court declined jurisdiction of the Special Action, CV-14-0164-SA. [Hearing Testimony of Mr. Lassen; Supreme Court Order filed July 11, 2014.]

Count One File No. 11-380 (2009 Lawsuit)

The Hackberry Elementary School District (the District), acting through its governing board (Board), hired Bradly Ellico (Ellico) as an administrator/principal for a three (3) year term commencing on July 1, 2008. [Joint Prehearing Statement, p. 3.]

In 2009, Mr. Lassen filed a lawsuit against the District, the Board and various members of the Board, in the Mohave County Superior Court case of *Ellico v. Hackberry*, Case No. 2009-01666 (hereinafter referred to as "2009 Litigation"). The District had an insurance policy issued by the Arizona Risk Retention Trust by which it hired both Robert D. Haws (Haws) and Gust Rosenfeld, P.L.C., (the Firm) as defense counsel. [Joint Prehearing Statement, p. 3.]

Respondent alleged Haws and the Firm had a conflict of interest and motioned for their disqualification. [Joint Prehearing Statement, p.4; State Bar Exhibit 16, 17,

19.] The trial court denied the motion on January 8, 2010.[2] [Joint Prehearing Statement; State Bar Exhibit 17.]

On February 9, 2010, the trial court dismissed a majority of the claims set forth in the Amended Verified Complaint and set an evidentiary hearing on the sole surviving claim, which was for injunctive relief. [State Bar Exhibit 19.] Respondent filed a notice of appeal from the trial court's order on behalf of Mr. Ellico, which appeal became titled *Ellico v. Hackberry*, 1 CA-CV 10-0769. [State Bar Exhibit 3.]

On August 7, 2012, the Arizona Court of Appeals, Division One, issued its memorandum decision (the Decision) in which it affirmed, among other things, the trial court's order denying Mr. Ellico's motion to disqualify counsel. [State Bar Exhibit 4, Bates SBA000257-272.] The Court of Appeals first observed that Ellico would have standing to challenge the defendant's choice of counsel only if Ellico himself had been counsel's past or current client. However, Ellico did not allege he ever had an attorney-client relationship with defense counsel. He did not allege the case presented an "extreme circumstance" that would otherwise enable him to raise such a challenge as contemplated under *Romley* (citation omitted). [State Bar Exhibit 4, Bates SBA000265-269.]

The Court of Appeals noted in a footnote Respondent seemed to argue Ellico was entitled to disqualify counsel based on an improper use of public monies to pay for the representation; however, he did not cite any place in the record showing public monies had been used for such a purpose. [State Bar Exhibit 4, Bates SBA000267, fn 8.]

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[2] The Minute Entry was erroneously dated January 8, 2009.

The Court of Appeals also identified numerous deficiencies in Respondent's briefing including, but not limited to:

i. Respondent failed to develop any argument regarding the defendants' failure to file an answer to the complaint filed in the case. Instead, he "simply reiterate[d] the underlying merits of his case, and he appears to generally object to orders made by the trial court." [Id. at Bates SBA000265, ¶ 13.]

ii. Respondent filed an amended brief that "contains misrepresentations of the record," and "fails in many respects to otherwise comport with the Arizona Rules of Civil Appellate Procedure (ARCAP)." The Court found this to be "especially troubling" because the Court had struck Respondent's original brief for failure to comply with those rules. [Id.]

iii. Respondent requested relief that was "improper in civil appellate practice." For example, he asked the Court to order the removal of certain of the Board members from their positions. [Id.]

The Court of Appeals granted the Appellees their costs and reasonable fees as provided for in ARCAP 21, stating as follows:

> The record reveals that Ellico commenced and continued this litigation primarily for delay and harassment, and he unreasonably expanded the proceedings by seeking to disqualify opposing counsel. Further, his brief unreasonably failed to comply with ARCAP 13(a). Even after his opening brief was struck for failure to comply with ARCAP, his subsequent brief did not comply with ARCAP.

[Id. at Bates SBA000271-72, fn 10.]

The attorney's fees and cost award was allocated equally among Mr. Lassen and his client. [Id., Bates SBA000271-2, ¶ 23.] The cost award is outstanding. [Hearing Testimony of Mr. Lassen.]

2011 Lawsuit and Appeal

On July 15, 2011, Respondent filed for Ellico a lawsuit against the District, the Board, various members of the Board, and/or counsel for the named defendants,

specifically, Robert D. Haws (Haws) and Gust Rosenfeld, P.L.C. (the Firm) in the Mohave Superior Court case of *Ellico v. Hackberry*, Case No. 2011-01182 (hereinafter referred to as "2011 Litigation"). [Joint Prehearing Statement, p. 3, Exhibit 1, Bates SBA000004-16.] On October 3, 2011, Respondent filed an Amended Verified Complaint in the 2011 Litigation in which he added additional claims for damages. [Joint Prehearing Statement p. 3; State Bar Exhibit 1, Bates SBA000044-56.]

Respondent did not serve Haws or the Firm with the Complaint. [Joint Prehearing Statement, p. 3; Hearing Testimony of Gary Lassen; Testimony of Robert Haws.] After answering the Amended Complaint, the opposing parties filed motions for judgment on the pleadings. [Joint Prehearing Statement, p. 3; Hearing Testimony of Robert Haws.]

In response, Respondent filed a motion for judgment on the pleadings, motion for summary judgment, and motion to disqualify the Board's attorneys' attorneys based upon allegations of a conflict of interest. The trial court denied the disqualification motion and dismissed Ellico's claims with prejudice. The Court further awarded Danny King his attorney's fees and costs in the amount of $13,897.50, and the remaining defendants in the Mohave County Superior Court case of *Ellico v. Hackberry School District, et. al.*, CV2011-01182, their attorney fees and costs in the amount of $23,116.00. Respondent filed a notice of appeal from the trial court's order on behalf of Mr. Ellico, which became titled *Ellico v. Hackberry*, 1 CA-CV 13-0025. [Joint Prehearing Statement, p. 4; State Bar Exhibit 12.]

On February 4, 2014, the Arizona Court of Appeals, Division One, issued its memorandum decision (the Decision) in which it affirmed, among other things, the trial court's order denying Mr. Ellico's motion to disqualify counsel and the trial court's

determination that Ellico's claims were barred for the failure to comply with the Notice of Claim statutes governing Ellico's claims. The Court of Appeals further found "Ellico's continued pursuit of waived claims lacks substantial justification and has unreasonably expanded this litigation." [Joint Prehearing Statement, p. 4; State Bar Exhibit 11, Bates SBA000283 ¶ 8, fn 1, and Bates SBA000286 ¶ 13 – SBA000288 ¶ 18.]

The Court of Appeals awarded the opposing parties attorney's fees and costs pursuant to Arizona Revised Statute § 12-349(B) and allocated the award equally between Ellico and Respondent. [Joint Prehearing Statement, p.5; State Bar Exhibit 11, Bates SBA000288 ¶ 18.]

The Hearing Panel finds Mr. Lassen intentionally pursued statutorily barred claims, failed to comply with Notice of Claims statutes, filed a complaint and amended complaint that had no basis in fact or law and named defendant's counsel in order to disqualify them and for the purpose of expanding the litigation. The Panel further finds Mr. Lassen intentionally and knowingly did not serve Haws or the Firm. The Panel also finds Mr. Lassen intentionally failed to cure the deficiencies of his opening brief before the Court of Appeals, Division One, failed to comply with the requirements of the Arizona Rules of Civil Appellate Procedure (ARCAP), and knowingly pursued relief that had no basis in law.

Count Two File No. 13-0301

As part of Respondent's representation of Complainant, Respondent required a $7,500.00 non-refundable retainer. By letter dated January 21, 2008, Respondent explained that the non-refundable deposit or fee is for "the filing cost and service of process fee attendant to initiating a lawsuit against Wells Fargo and named individuals." [State Bar Exhibit 21, Bates SBA000378.] The letter further explained

that "[s]ubsequent fees and costs particularly those of expert witnesses are the client's responsibility and should be paid as they are incurred." [Id.]

Respondent filed the United States Federal Court lawsuit of *Deese v. Wells Fargo Bank, et.al.*, CV-08-00539. In or around July 10, 2009, Respondent provided Complainant with billing records detailing the legal services purportedly performed in January and February 2008 along with the fees and costs associated with those services. The total bill was $7,500.00, leaving a balance of zero. [Joint Prehearing Statement, p. 5.]

Over the course of the representation, Respondent provided Complainant with billing records detailing the purported costs incurred during the representation and Complainant paid Respondent no less than $32,000.00 for purported costs and expenses. [Joint Prehearing Statement, p. 6; State Bar Exhibit 21, Bates SBA000382-392; Hearing Testimony of Julie Deese.]

On or before June 1, 2010, Complainant requested a full accounting of all money paid to Respondent. Respondent's legal assistant, Stephanie Somplack, provided Complainant with billing records by e-mail and indicated that she intended to perform a thorough audit of the billing records. [Joint Prehearing Statement, p. 6; State Bar Exhibit 21, Bates SBA000397.]

The billing records contained a number of repeated, omitted or disputed costs including, but not limited to, a double billing for a mediation to Scott and Skelly in the amount of $1,867.50, legal fees of $147.50 incurred for reviewing the transcript of a deposition, fees and costs of $2,649.95 associated with expert John V. Scialli, a $1,050.00 "prepayment" associated with a purported deposition of Dr. Nelson-Spiers, a $203.00 payment for a purported video deposition of Travis Clements and a

$1,000.00 payment to a Barry W. Linden, which was evidenced by a check drawn on the law firm's operating bank account but does not appear on any of the accountings provided to Complainant. [State Bar Exhibit 21, Bates SBA000393, 395-396, 398-401.]

On or about October 13, 2010, Respondent filed an appeal with the Ninth Circuit of the United States Court of Appeal after receiving an unfavorable ruling on a motion for summary judgment in the trial court. In March 2012, Respondent entered into an Agreement for Discipline by Consent requiring Respondent to serve a 30-day suspension effective April 28, 2012, for violations of ERs 1.3, 1.4(a)(2)-(4), 1.4(b), 2.1, 8.1, 8.4(c). [Joint Prehearing Statement, p.6; State Bar Exhibit 81, 82, 83.]

On April 24, 2012, Susan Weber, an attorney and friend of Complainant's, documented a conversation between Complainant and Respondent wherein Complainant informed Respondent that she googled herself and discovered the Ninth Circuit's affirmation of the lower court's unfavorable ruling. The Weber e-mail continues by documenting Respondent's response which was that although Respondent received the ruling "a few weeks ago" Respondent did not inform Complainant because he had been very busy.

The Weber e-mail closes with a demand for an accurate accounting of all client funds related to the representation along with the supporting invoices and proofs of payment including, but not limited to:

a. Any and all court reporting services;

b. Any and all doctor's reports;

c. Any and all airline tickets and hotel bills for travel;

d. Any and all telephone bills;

e. Any and all photocopying; and

f. Any other miscellaneous expenses such as postage.

[State Bar Exhibit 21, Bates SBA000407.]

Later that day, Respondent responded and indicated he would begin assembling the information. Respondent further claimed "(he has) been attempting to explore other avenues for further action and wanted a detailed plan of action to lay out for consideration." Still later that day, when asked for further information regarding the "options," Respondent stated, "I will respond in detail regarding all options that I have looked into including going to the U.S. Supreme Court and pursuing a separate case against (Complainant's) former supervisor." When asked when they should expect a response, Respondent stated "no later than next week." [State Bar Exhibit 21, Bates SBA000405-7; Hearing Testimony of Susan Weber; Hearing Testimony of Julie Deese.]

In an e-mail dated May 3, 2012, Complainant asked Respondent a number of questions including: "[W]hat have you done on the case since Dec 2011?" to which Respondent replied "...i [sic] am working on the list of options including a separate case against Reede Reynolds. My anger against the Court allowing Wells to escape by doing nothing maked [sic] my blood pressure swell and has caused me to have random anger outbursts." [State Bar Exhibit 21, Bates SBA000408.] On May 4, 2012, Weber e-mailed Respondent and again requested the accounting to no avail. [Id. at bates SBA000409-410.] On May 5, 2012, Complainant e-mailed Respondent acknowledging his stress but again requested information. Later that day, Respondent simply stated "thank you for your concern; I am working on putting the report for you together." [Id. at Bates SBA000410.]

On May 7, 2012, Weber e-mailed Respondent memorializing that Respondent failed to provide the accounting and requested additional information regarding the status of his efforts. Later that day, Respondent again responded that he was "working on a comprehensive report for you both top [sic] be completed this week." [State Bar Exhibit 21, Bates SBA000411-413.] Complainant responded later that day asking "[Y]ou are causing me to have an anxiety attack, I am asking just one more time to answer the freakin question??? What is your problem???" [Id. at Bates SBA000412.] After a back and forth between Weber, Complainant and Respondent, Respondent stated, "I will respond with a detailed narrative by week's end, and then I propose we all three have a lengthy conference call to discuss all matters." [Id. at Bates SBA000411.]

After being informed that Complainant was scheduled to have major surgery on May 29, Respondent stated the following in a response e-mail dated May 9, 2012, "[M]y prayers are with you. I will be working most of Friday and Saturday, if necessary, to get you everything we have discussed. I will include a short to the point summary and detail of the legal issues as well. This case and the injustice that has occurred to date is appalling." [Id. at Bates SBA000411-414]. On May 12, 2012, Respondent e-mailed Complainant and stated the following:

> I have been doing legal research yesterday and am excited about pushing toward a jury trial moving in state court to get away from the bitch judge and get to a trial SOONER. I am anxious to get this going in court in HJune [sic]. I will still send you the full analysis of the federal discrimination analysis and the advice I [sic] received regarding getting to the Supreme court including pros and cons. Immediacy is what you need and deserve. More to come soon.

[Id. at Bates SBA000415-416.]

When asked about details regarding the pursuit of the lawsuit on May 15, 2012, Respondent stated, in part, "I will send update with specific strategy options as discussed in early June." [State Bar Exhibit 21, Bates SBA000411-414.]

On June 25, 2012, Respondent was reinstated to the practice of law. [State Bar Exhibit 83.] On July 14, 2012, Complainant terminated Respondent. Later that day, Respondent responded, "I am working on your request, and Ii [sic] was already working on the issues and options we discussed in April and May." On December 3, 2012, Weber again requested a full accounting for the legal services and costs be provided along with any supporting documentation. On December 31, 2012, Weber again requested a full accounting for the legal services and costs in an e-mail entitled: "Still no response from you." Later that day, Respondent responded claiming that he was out with the flu but that he was working on it and will respond "as soon as I can, and in any event, before the 15th." [State Bar Exhibit 21, Bates SBA000417-419.]

In his initial response to the State Bar, dated May 6, 2013, Respondent states that "this was a case in which the costs far exceeded the amount paid by the client" but failed to provide any accounting, explanation or supporting documentation regarding the purported costs incurred during the representation. Respondent also admitted the "forensic accountant was not fully paid" and indicated that he intended to provide the State Bar with an "amended, supplemental response." [State Bar Exhibit 26, Bates SBA000429-30.]

On August 19, 2013, the State Bar requested additional information from Respondent including, but not limited to:

i. A copy of the representation letter for (Complainant);

ii. Copies of all invoices/billing statement/time records relating to the representation of (Complainant);

iii. Copies of all bank statements/client ledgers for your Trust account and relating to the representation of (Complainant) and evidencing all payments made by (Complainant) to you, all payments made by you on her behalf, and the balance, if any, of funds that you currently hold relating to the representation;

iv. Correspondence between you and (Complainant) relating to the representation";

v. The 'amended, supplemental response' that you reference in your May 6 letter, which I have not received;

vi. Answers to the following questions:

vii. When did you advise the client that you were suspended?

viii. How did you advise the client of the suspension?

ix. Provide any supporting documentation regarding the manner in which you related this information.

[State Bar Exhibit 29.]

On September 3, 2013, Respondent responded by providing a copy of the engagement letter and representation agreement and further explained that he anticipated being interviewed and thought that the production of documents could take place as part of the interviewing process. In his letter dated September 3, 2013, Respondent finally stated, "I had assembled information regarding cost expensing and will retrieve that effort and forward it under separate cover letter." [State Bar Exhibit 30.]

In an e-mail to the State Bar dated September 26, 2013, Respondent again indicated that he would send the requested information no later than September 30, 2013. [State Bar Exhibit 31.]

The Hearing Panel finds Mr. Lassen intentionally failed to follow his client's instructions during representation and failed to communicate reasonably with his clients. The Panel finds Mr. Lassen knowingly charged his clients an unreasonable fee and intentionally failed to take steps to protect his clients' interests after termination of the representation. The Panel further finds Mr. Lassen intentionally engaged in the practice of law while suspended and that his conduct involved dishonesty, fraud and deceit.

Count Three (File No. 13-1205)

In June 2009, Respondent filed an employment discrimination and wrongful termination lawsuit against Wells Fargo Bank on behalf of Complainants. [Joint Prehearing Statement, p. 7.] Wells Fargo filed a Motion to Dismiss and Respondent did not respond. After the motion was granted as to one of the claims, Wells Fargo filed an answer to the remaining count and requested attorney's fees and costs. [Answer at ¶ 22.]

The remaining claim was dismissed without prejudice from the inactive calendar for lack of prosecution. In June 2010, Wells Fargo filed a Motion for an award of attorney's fees and costs against Complainants and Respondent. [Joint Prehearing Statement, p. 7.] Respondent did not file a response and in late July, Wells Fargo was awarded attorney's fees and costs in the amount of $44,934.80 against Complainants and Respondent, jointly and severally. [State Bar Exhibit 38, Bates SBA000455.]

Respondent requested a new trial which was denied on November 9, 2010. [Joint Prehearing Statement, p. 7.] On January 28, 2011, the court issued an order denying the new trial and reaffirming the judgment of $44,934.80 against Complainants and Respondent, jointly and severally. [Joint Prehearing Statement, p.7; State Bar Exhibit 54.]

On February 25, 2011, Respondent filed a Notice of Appeal and Division One of the Court of Appeals affirmed the trial court's rulings in all respects including, but not limited to, the judgment of $44,934.80 against Respondent and his clients, jointly and severally. [Joint Prehearing Statement, p. 7; State Bar Exhibit 38, Bates SBA000460-62 ¶ 12-15, Bates SBA000465-6 ¶ 17-19.]

On June 14, 2012, Respondent filed a Notice of Bankruptcy in the lower court. [Joint Prehearing Statement, p. 7.]

The Hearing Panel finds Mr. Lassen intentionally failed to follow his client's instructions during representation and failed to communicate reasonably with his clients. The Panel finds Mr. Lassen had a concurrent conflict of interest. The Panel further finds Mr. Lassen knowingly failed to timely file responsive and other pleadings and intentionally failed to act diligently during his representation of his clients.

Count Four File No. 13-2214

On April 9, 2012, Respondent filed a complaint on behalf of his client, Andrew Goode, in the Pinal County Superior Court lawsuit of *Goode v. Keys, et.al.*, CV 2012-00959 (hereinafter referred to as "Lawsuit"). At all times pertinent, Respondent was the sole attorney of record in the lawsuit. [Joint Prehearing Statement, p. 8.]

As the claim was accepted by the Arizona Counties Insurance Pool (ACIP), Respondent and his client had certain statutory obligations pursuant to Arizona

Revised Statute § 23-1023. [Ariz. Rev. Stat. § 23-1023(d); Hearing Testimony of Michael Warzynski.]

On or about April 12, 2012, James Jellison (hereinafter referred to as "Jellison") notified Respondent he represented the Pinal County Sheriff's Department. [Joint Prehearing Statement, p. 8; Hearing Testimony of James Jellison.]

Effective April 28, 2012, Respondent was suspended for 30 days by consent in SB File No. 10-1508 for violations of 1.3, 1.4(a)(2)-(4), 1.4(b), 2.1, 8.1, 8.4(c). On June 25, 2012, Respondent was reinstated to the practice of law. [Joint Prehearing Statement, p. 9; State Bar Exhibit 81-83.]

On or about August 24, 2012, the Court issued a Notice which set the matter for a Dismissal Hearing Without Prejudice on September 25, 2012, due to Respondent's failure to serve the Defendants. On September 24, 2012, Respondent contemporaneously filed a Notice of Change of Judge and Motion to Extend Time For Service. On September 25, 2012, neither Respondent nor his client appeared at the Dismissal Hearing. [Joint Prehearing Statement, p. 9; State Bar Exhibit 56, Bates SBA000545, 548-550, 556.]

On September 25, 2012, Jellison entered a special limited appearance and filed affidavits of the individually named Pinal County employees attesting to their availability for service at their publically disclosed business addresses. Based upon the Notice of Change of Judge, the Court referred the case to the Presiding Judge and the matter was reassigned. On October 3, 2012, the Court denied Respondent's Motion to Extend Time for Service and later rescheduled the Dismissal Hearing for November 19, 2012. On October 15, 2012, Jellison filed a Motion to Dismiss Pinal County and certain individually named Defendants collectively referred to as the "Pinal

County Defendants." [Joint Prehearing Statement, p. 9; State Bar Exhibit 56, Bates SBA000580, Bates SBA000583-593.]

On November 8, 2012, Respondent filed an untimely Response to the Pinal County Defendants' Motion to Dismiss. While Respondent explained that Plaintiffs filed supplemental Notices of Claim and intended to file an Amended Complaint, the untimely response did not provide any "good cause" as to why Respondent did not use any efforts to serve the Pinal County Defendants during the 120 day statutory period set forth in Rule 4, Ariz. R. Civ. P. [State Bar Exhibit 56, Bates SBA000595-98.]

On November 16, 2012, Respondent filed a First Amended Complaint. Joint Prehearing Statement, p. 10; Bates SBA000609-52.] On November 19, 2012, the Court held the Dismissal Hearing wherein Respondent admitted that he did not serve the Pinal County Defendants during the statutory period but that by filing an Amended Complaint, the 120 day statutory period is extended or abated. [Bates SBA000654-674.]

Following oral argument, the Court rejected Respondent's argument and prepared a minute entry dismissing the matter as to the Pinal County Defendants. [Bates SBA000676-677, 696]

On December 13, 2012, the Court filed an order stating "that Defendants Pinal County, Pinal County Sheriff's Office, Paul Babeu, Steve Henry, Blake King, Michael Hughley, Brandi Clark and Paul Ahler are dismissed from this action, without prejudice." [Joint Prehearing Statement, p. 10; Bates SBA000698-700.]

On February 28, 2013, Respondent filed misdated Applications for Entry of Default against four of the Pinal County Defendants. In support of his applications,

Respondent claimed that the Pinal County Defendants were served and failed to answer the First Amended Complaint. [Joint Prehearing Statement, p. 10; Bates SBA000702-713.]

On June 13, 2013, Respondent filed properly dated Notices of Application for Default, Applications for Entry of Default and sworn "Affidavits On Default" against the same four Pinal County Defendants. The Affidavit pleadings were filed under penalty of perjury and fail to reference the prior dismissal documents, the dismissal hearing or the dismissal order and inaccurately stated that the respective Defendants "failed to plead or otherwise defend." The Notice pleadings also failed to reference the prior dismissal documents, the dismissal hearing or the dismissal order and inaccurately stated that the respective Defendants "failed to plead or otherwise defend." [Joint Prehearing Statement, p. 10; State Bar Exhibit 56, Bates SBA000715-747.]

The June 2013 pleadings did result in the entry of default against Pinal County, Michael Hughley and Brandi Clark. [Id. at Bates SBA000749-754.] On June 14, 2013, Respondent filed a Rule 41 Notice of Dismissal with Prejudice against the private entity. [Joint Prehearing Statement, p. 10; State Bar Exhibit 56, Bates SBA000756-760.]

On June 28, 2013, Jellison mailed Respondent a letter acknowledging receipt of the June 14, Rule 41 Notice of Dismissal. [Joint Prehearing Statement, p. 10; State bar Exhibit 56, Bates SBA000762.]

On July 11, 2013, Respondent filed Notices of Application for Default, Applications for Entry of Default and sworn "Affidavits On Default" against two Pinal County Defendants. [Joint Prehearing Statement, p. 11; State Bar Exhibit 56, Bates SBA000764-780.]

The Affidavit pleadings were filed under penalty of perjury and fail to reference the prior dismissal documents, the dismissal hearing or the dismissal order and inaccurately stated that the respective Defendants "failed to plead or otherwise defend". The Notice pleadings also failed to reference the prior dismissal documents, the dismissal hearing or the dismissal order and inaccurately stated that the respective Defendants "failed to plead or otherwise defend." [Joint Prehearing Statement, p. 10; State Bar Exhibit 56, Bates SBA000764-780.]

The July 2013 pleadings did result in the entry of default against the two Pinal County Defendants. [Id. at Bates SBA000782-785.] On July 18, 2013, Jellison wrote Respondent demanding the production of any default pleading or documents as he was unaware of any of Respondent's prior efforts to obtain a default judgment. Jellison further demanded that Respondent file the appropriate paperwork and take all efforts to undo any attempts to obtain a default judgment against any of the Pinal County Defendants. [Id. at Bates SBA000787.]

On July 31, 2013, Respondent wrote Jellison and stated, in part, the following:

> There appears to be some confusion on your part as to the status of the Pinal Defendants. After the court dismissed the original Complaint without prejudice, a new Complaint was filed and timely served on multiple Pinal County Defendants on different dates. To date, no named county defendant has filed an Answer. Other defendants in this matter have also been served, and one settlement has been reached.
>
> It was my intent to get the attention of the Pinal County defendants by initiating the default process. It appears and is confirmed by your letter that there is some confusion among the County Defendants as to their status. Please identify who you represent and I will provide you the service information immediately.

[Joint Prehearing Statement, p. 11; Id. at Bates SBA000789.]

On August 6, 2013, Jellison replied stating, in pertinent part,

> "I...assure you there is now no confusion on my part about what you have done.... Your pursuit of default judgments in a case where my clients made a limited appearance and, through that appearance, obtained a dismissal is beyond my comprehension. Your failure to send me copies of your Affidavits and Applications when you know I have made a limited appearance in the matter on behalf of these already dismissed Pinal County Defendants is also beyond my comprehension. Your July 31, 2013 letter provides no cogent explanation or justification for your behavior in this regard."

[Id. at Bates SBA000791-794.]

The Hearing Panel finds Mr. Lassen intentionally failed to follow his client's instructions during representation and knowingly failed to act diligently during the representation. The Panel further finds Mr. Lassen intentionally pursued non-meritorious claims and default judgments and that he knowingly made false statements of fact or law regarding his pursuit of those non-meritorious claims and default judgments. The Panel finds Mr. Lassen's actions in filing inaccurate and false pleadings and disobeying obligations under rules of the court were knowing. Mr. Lassen's conduct and actions prejudiced the administration of justice.

Count Five File No. 13-3323

On February 12, 2013, ACIP retained Complainant to address the lien issues and Respondent's violation of Section 23-1023, Ariz. Rev. Stat. [Hearing Testimony of Michael Warzynski; Hearing Testimony of Susan Strickler.] On April 8, 2013, Complainant filed a Motion to Intervene. On April 18, 2013, Respondent confirmed to Complainant that he settled a portion of the claim without notice to or authorization by ACIP. [Joint Prehearing Statement, p. 12; Exhibit 69, Bates SBA000922-923, 925.]

On May 14, 2013, Complainant met with Respondent and again confirmed that Respondent settled the claims with one of the parties for $23,500.00 without notice to or authorization by ACIP. Between June and October 2013, Complainant and

Respondent have written correspondence regarding Respondent's unauthorized settlement and subsequent unaccounted for distribution(s) of the settlement proceeds. [Hearing Testimony of Michael Warzynski; Hearing Testimony of Susan Strickler; State Bar Exhibit 69, Bates SBA000927-941.]

To date, the State Bar has not received a response from Respondent or any of his prior attorneys to the screening letters in this case. [State Bar Exhibits 70, 71, 72, 73, 74.]

The Hearing Panel finds Mr. Lassen intentionally filed non-meritorious claims and defaults. The Panel finds Mr. Lassen's failure to comply with statutory requirements, was knowing if not intentional as was his failure to expedite litigation. The Panel finds Mr. Lassen intentionally practiced law during his suspension. Moreover the Panel finds that Mr. Lassen intentionally failed to respond to inquiries and demands for information by the State Bar related to their disciplinary investigation. Mr. Lassen's conduct prejudiced the administration of justice.

IV. CONCLUSIONS OF LAW AND DISCUSSION OF DECISION

The Panel finds clear and convincing evidence Mr. Lassen violated Rule 42, ERs 1.1 (competence), 1.2 (scope of representation), 1.3 (diligence), 1.4(a) (communication). 1.5(a) (fees), 1.16 (terminating representation), 1.7(a)(2) (conflict of interest), 3.1 (meritorious claims and contentions), 3.2 (expediting litigation), 3.3(a)(1) (candor towards the tribunal), 3.4 (fairness to opposing party and counsel), 4.1(a) (truthfulness in statements to others), 5.5 (unauthorized practice of law), 8.1 (knowingly failure to respond for a lawful demand for information by a disciplinary authority), 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation),

8.4(d) (conduct prejudicial to the administrative of justice) and Rule 54(d) (failure to promptly respond to request by the disciplinary authority).

Count One

Mr. Lassen violated ER 1.1 when his appellate brief filed in the 2009 Litigation unreasonably failed to comply with ARCAP 13(a). The Court of Appeals gave Mr. Lassen an opportunity to correct the deficiencies, but his opening brief was ultimately struck. Mr. Lassen further pursued statutorily barred claims and failed to comply with Notice of Claim statutes.

Mr. Lassen violated ER 3.1 when in the 2009 Litigation he filed a complaint and amended complaint which had no basis in fact or law. The complaints were dismissed and his subsequent briefs failed to comply with ARCAP 13(a). An award of costs and fees were assessed against Respondent and his client. Mr. Lassen further named defendant's counsel as defendants in the 2011 Litigation without any basis in fact or law. Mr. Lassen also expanded the litigation when he pursued claims that were statutorily barred.

Mr. Lassen violated ERs 3.3(a)(1), 4.1(a) and 8.4(c), by filing an amended brief that did not comply with requirements of ARCAP and misrepresented the record within the brief.

Mr. Lassen violated ER 8.4(d) by filing a complaint and an amended complaint that had no basis in fact or law. Mr. Lassen also filed two appellate briefs that failed to comply with ARCAP rule requirements, resulting in an award of costs and fees because of those deficiencies. Mr. Lassen further named defendants in a litigation in an effort to disqualify them as counsel, without any basis in fact or law, thereby unreasonably expanding the litigation.

Count Two

Mr. Lassen violated ER 1.2 by repeatedly failing to abide by the client's instructions during the representation.

Mr. Lassen violated ER 1.4(a) when he failed to reasonably communicate with the client during the representation.

Mr. Lassen violated ER 1.5(a) by charging his clients an unreasonable fee for the representation.

Mr. Lassen violated ER 1.16 by failing to take the steps reasonably necessary to protect the client after the termination of the representation.

Mr. Lassen violated ER 5.5 by engaging in the practice of law while suspended.

Mr. Lassen violated ER 8.4(c) by engaging in conduct involving dishonesty, fraud, deceit or misrepresentations.

Count Three

Mr. Lassen violated ER 1.1 by failing to exhibit the knowledge or preparation necessary for the representation.

Mr. Lassen violated ER 1.2 by failing to abide by the client's instructions throughout the representation.

Mr. Lassen violated ER 1.3 by failing to act diligently during the course of representation.

Mr. Lassen violated ER 1.4 by failing to reasonably communicate with the client during the representation.

Mr. Lassen violated ER 1.7(a)(2) by having a concurrent conflict of interest during the representation.

Mr. Lassen violated ER 3.1 by failing to timely file responsive and other pleadings resulting in sanctions being imposed against Respondent and his client.

Mr. Lassen violated ER 3.2 by failing to timely file responsive and other pleadings resulting in sanctions being imposed against himself and his client.

Mr. Lassen violated ER 8.4(d) by failing to timely file responsive and other pleadings resulting in sanctions being imposed against himself and his client.

Count Four

Mr. Lassen violated ER 1.2 by failing to abide by the client's instructions during the representation.

Mr. Lassen violated ER 1.3 by failing to act diligently during the representation.

Mr. Lassen violated ER 3.1 by pursuing non-meritorious claims and default judgments.

Mr. Lassen violated ER 3.3 when he knowingly made a false statement of fact or law to the tribunal regarding Respondent's pursuit of non-meritorious claims and default judgments.

Mr. Lassen violated ER 3.4 by filing inaccurate and false pleadings and knowingly disobeyed an obligation under the rules of a tribunal.

Mr. Lassen violated ER 8.4(d) by repeatedly engaged in conduct prejudicial to the administration of justice.

Count Five

Mr. Lassen violated ER 1.1 by failing to provide competent representation to his client as he failed to comply with the statutory requirements in a Workman's Compensation Claim involving an Insurance Pool such as ACIP.

Mr. Lassen violated ER 1.3 by consistently failed to act diligently throughout the lawsuit and his representation of his clients.

Mr. Lassen violated ER 3.1 by filing meritless claims and unauthorized defaults on behalf of his clients.

Mr. Lassen violated ER 3.2 by failing to make reasonable efforts to expedite litigation consistent with the interests of his clients.

Mr. Lassen violated ER 5.5 by engaging in the practice of law as defined by Rule 31, Ariz. R. Sup. Ct., during his suspension.

Mr. Lassen violated ER 8.1 by knowingly failing to respond to a lawful demand for information by the disciplinary authority.

Mr. Lassen violated ER 8.4(d) by engaging in conduct that was prejudicial to the administration of justice.

Mr. Lassen violated Rule 54(d)(2) by failing to promptly respond to a request by the disciplinary authority for information relevant to pending charges, complaints or matters under investigation.

Discussion

Having considered the testimony and exhibits in this matter, we find most troubling Mr. Lassen's repeated intentional misconduct. This is typified by his intentionally naming Mr. Haws and his firm as defendants in order to disqualify them from representing their client of over two years and then never serving them.

This misconduct caused actual and significant injury to the client as the client was forced to secure new counsel consisting of two separate law firms, incur additional costs, case efficiently suffered and his relationship with the Board was affected. [Hearing Testimony of Mr. Haws.]

Mr. Lassen argues the naming of Haws and the Firm in the 2001 Litigation was necessary as Mr. Haws participated in an illegal meeting that violated the Open Meeting Law in violation of Section 38-43-107(B), Ariz. Rev. Stat. However, there was no evidence to support his argument.

This is further typified by Mr. Lassen's intentional false billing for fees and costs in Count Two, followed by his refusing to notify his client of the Ninth Circuit's affirmation of the lower court's unfavorable ruling. We find these to be far worse than mere negligent actions. He intentionally misled his client with untruths and omissions of information. His deceitful promises were multiple and intentional.

In Count Three, we conclude even his inaction was worse than negligent or accidental. He continued a pattern of intentionally misleading his clients to their harm and with selfish motive. Similarly in Court Four, his misconduct was planned, intentional and deceitful. In Count Five, he intentionally refused to follow the law and intentionally acted outside that law in reaching an unauthorized settlement and distribution of the settlement proceeds.

Additionally troubling, is Mr. Lassen's intentional refusal to notify his clients of his suspension and his intentional unauthorized practice of law while suspended. Mr. Lassen admits he did not associate counsel during his period of suspension and maintains his current suspension did not preclude him from practicing law in Ninth Circuit Court of Appeals. We disagree. Mr. Lassen cannot practice law in any jurisdiction, state or federal, if the matter on appeal arose from facts or law occurring in a matter originating in Arizona. In his prior discipline matter involving a suspension, Mr. Lassen was found to have engaged in the unauthorized practice of law while suspended, similar misconduct to the instant matter.

VI. SANCTIONS

In attorney discipline matters, the Hearing Panel reviews the American Bar Association's *Standards for Imposing Lawyer Sanctions* ("*Standards*") in weighing what sanction to impose. Rule 58(k), Ariz. R. Sup. Ct. The appropriate sanction, however, turns on the unique facts and circumstances of each case. *In re Wolfram*, 174 Ariz. 49, 59, 847 P.2d 94, 104 (1993).

Analysis under the ABA *Standards*

The Hearing Panel considers the duty violated, the lawyer's mental state, the actual or potential injury caused by the misconduct, and the existence of aggravating and mitigating factors. *In re Peasley*, 208 Ariz. 27, 33, 35, 90 P.3d 764, 770 (2004). *See also Standard* 3.0. Because this matter involves multiple counts with multiple violations, the Panel determined that a detailed discussion of the *Standards* on a count-by-count basis is not necessary because numerous *Standards* are applicable and a violation-by-violation analysis would be unnecessary. *In re Woltman*, 181 Ariz. 525, 892 P.2d 861 (1995). The ultimate sanction imposed should at least be consistent with the sanction for the most serious instance of misconduct. *In re Redeker*, 177 Ariz. 305, 868 P.2d 318 (1994), citing 1991 ABA *Standards*, Theoretical Framework, p.6.

Standard 4.4 Lack of Diligence is applicable to Mr. Lassen's violations of ERs 1.2, 1.3 and 1.4. *Standard* 4.41 provides:

> Disbarment is generally appropriate when:
> (a) a lawyer abandons the practice and causes serious or potentially serious injury to a client: or
> (b) a lawyer knowingly fails to perform services for a client and causes serious or potentially serious injury to a client; or
> (c) lawyer engages in a pattern of neglect with respect to client matters and causes serious or potentially serious injury to a client.

In Count Two, Mr. Lassen failed to adequately communicate with and diligently represent his client. He further failed to abide by the clients decisions during the course of representation when he failed to actively litigate the matter and also failed to provide accurate and updated information to his client on the services he did provide. In Count Three, Mr. Lassen failed to abide by the client's direction regarding representation, failed to adequately communicate and provide adequate representation, and failed to file responsive pleadings to protect the client's rights. In Count Four, Mr. Lassen failed to abide by the client's instructions and failed to appear at hearing. He further filed pleadings containing inaccurate and false statements and non-meritorious claims and disobeyed his obligation under the rules of a tribunal. In Count Five, Mr. Lassen failed to diligently represent his clients during the course of representation.

Standard 4.6, Lack of Candor is applicable to Mr. Lassen's violation of ER 8.4(c). *Standard* 4.61 provides:

> Disbarment is generally appropriate when a lawyer knowingly deceives a client with the intent to benefit the lawyer or another, and causes serious or potentially serious injury to a client.

In Count One, Mr. Lassen filed an amended brief that misrepresented the record and failed to comply with the rule requirements. In Count Two, Mr. Lassen misled his client to believe there were other courses of action available after dismissal of her case and failed to advise the client he was suspended.

Standard 6.1, *Violation of Duties Owed the Legal System* is applicable to Mr. Lassen's violations of ERs 3.3(a), 4.1(a), 8.1 and Rule 54(d). *Standard* 6.11 provides:

> Disbarment is generally appropriate when a lawyer, with the intent to deceive the court, makes a false statement,

> submits a false document, or improperly withholds material information, and causes serious or potentially serious injury to a party, or causes serious or potentially serious adverse effect on the legal proceeding.

In Count One, Mr. Lassen filed an amended brief with the Arizona Court of Appeals that misrepresented the record and failed to comply with rule requirements of Arizona Rules of Civil Appellate Procedure (ARCAP). In Count Four, Mr. Lassen knowingly made a false statement of fact and law to the court by filing non-meritorious claims and default judgments. In Count Five, Mr. Lassen failed to promptly respond to the State Bar's investigation and request for information.

Standard 6.2 *Abuse of the Legal Process* is applicable to Mr. Lassen's violation of ERs 3.1, 3.2, 3.4 and 8.4(d). *Standard* 6.21 provides:

> Disbarment is generally appropriate when a lawyer knowingly violates a court order or rule with the intent to obtain a benefit for the lawyer or another, and causes serious injury or potentially serious injury to a party, or causes serious or potentially serious interference with a legal proceeding.

In Count One, Mr. Lassen filed complaints that had no basis in fact or law and his appellate briefs did not comply with ARCAP which resulted in costs and fees being imposed against Mr. Lassen and his client. Mr. Lassen intentionally named defendants' counsel Haws and the Firm as defendants in the 2011 litigation in an effort to disqualify them as counsel when there was no basis in fact or law to disqualify counsel. Mr. Lassen further pursued claims barred statutorily and unreasonably expanded the litigation.

Standard 7.1 *Violations of Other Duties owed as a Professional* is applicable to Mr. Lassen's violation of ER 5.5 and provides:

> Disbarment is generally appropriate when a layer knowingly engages in conduct that is a violation of a duty owed as a professional with the intent to obtain a benefit for the lawyer or another, and causes serious or potentially serious injury to a client, the public, or the legal system.

In Count Five, Mr. Lassen engaged in the unauthorized practice of law while suspended.

Standard 8.1 Prior Discipline Orders provides:

> Disbarment is generally appropriate when a lawyer:
> (a) intentionally or knowingly violates the terms of a prior disciplinary order and such violation causes injury or potential injury to a client, the public, the legal system, or the profession; or
> (b) has been suspended for the same or similar misconduct, and intentionally or knowingly engages in further similar acts of misconduct that cause injury or potential injury to a client, the public, the legal system, or the profession.

The *Commentary* states:

> Disbarment is warranted when a lawyer who has been previously disciplined intentionally or knowingly violates the terms of that order, and as a result, causes injury or potential injury to a client, the public the legal system. The most common case is one where a lawyer has been suspended but nevertheless, practices law. The courts are generally in agreement in imposing disbarment in such cases.

AGGRAVATION AND MITIGATION

The Hearing Panel determined that the following aggravating factors are supported by the record:

Standard 9.22(a) prior disciplinary offenses. Mr. Lassen's prior disciplinary offenses are as follows:

In File No. PDJ-2013-9068, Mr. Lassen was suspended for two years effective May 7, 2014,[3] for violating Rule 42, Arizona Rules of Supreme Court, ERs 1.3, 1.4, 1.5, 1.16, 3.1, 3.2, 5.5, 8.4(c), 8.4(d) and Rule 54(c). [Joint Prehearing Statement, p. 2.]

In File No. PDJ-2011-9079, Mr. Lassen was suspended for 30 days effective April 28, 2012, for violating Rule 42, Arizona Rules of Supreme Court, ERs 1.3, 1.4(a)(2)-(4), 1.4(b), 2.1, 8.1, 8.4(c). Mr. Lassen was reinstated effective June 25, 2012; [Exhibits 81-83.]

In File No. 06-1529, Mr. Lassen was censured and placed on one year of probation (MAP) effective December 14, 2009. He was convicted of extreme DUI, reckless endangerment and leaving the scene of an injury accident in violation of Rule 42, Ariz. R. Sup. Ct., ER 8.4(b), and Rule 53(h)(1). [Exhibit 78-80.] Mr. Lassen's violations in the instant matter are similar in nature to his prior ethical rule violations;

Standard 9.22(b) dishonest or selfish motive. Mr. Lassen intentionally misled clients with a selfish motive and for his benefit.

Standard 9.22(c) pattern of misconduct. Mr. Lassen was previously suspended for engaging in the unauthorized practice of law, ER 5.5, and for additional violations present here;

Standard 9.22(d) multiple offenses. There are multiple counts of misconduct in this matter involving separate clients;

Standard 9.22(g) refusal to acknowledge wrongful nature of conduct;

Standard 9.22(i) substantial experience in the practice of law. Mr. Lassen was

[3] Mr. Lassen filed a motion to stay the suspension, which was denied. Mr. Lassen's appeal of this matter is pending before the Supreme Court.

licensed to practice law in Arizona in 1978; and

Standard 9.22(j) indifference to making restitution. Mr. Lassen has failed to refund any unearned fees or to make restitution to clients.

Mr. Lassen offered no evidence of any mitigating factors, therefore, the Hearing Panel determined there are no mitigating factors present in the record.

VII. CONCLUSION

It has long been established that the object of lawyer discipline is not to punish the lawyer, but to protect the public, the profession and the administration of justice. *Peasley, supra* at ¶ 64, 90 P.3d at 778. Based on the facts, conclusions of law, and application of the *Standards*, including aggravating and mitigating factors, the Panel determine that disbarment is the appropriate sanction. Accordingly,

IT IS ORDERED:

Mr. Lassen is disbarred from the practice of law effective immediately.

IT IS FURTHER ORDERED that Mr. Lassen shall pay the following amounts of restitution to the following individuals:

Restitution

1) Danny King or authorized representative for attorney's fees and costs in the amount of $13,897.50;
2) The defendants in the Mohave County Superior Court case of *Ellico v. Hackberry School District, et. al.*, CV2011-01182 for attorney's fees and costs in the amount of $23,116.00.
3) Julie Deese in the amount of $6,917.95.
4) Wells Fargo or authorized representative in the amount of $44,934.80.
5) ACIP in the amount of $11,500.00.

IT IS FURTHER ORDERED that Mr. Lassen shall pay costs and expenses in this matter.

A final judgment and order will follow.

DATED this 28th day of August, 2014.

William J. O'Neil

William J. O'Neil, Presiding Disciplinary Judge

CONCURRING

Michael Snitz

Michael Snitz Volunteer Public Member

Ralph Wexler

Ralph Wexler, Volunteer Public Member

Copies of the foregoing mailed/emailed
this 28th day of August, 2014, to:

Gary L. Lassen
1234 S. Power Rd., Ste. 254
Mesa, AZ 85206-3761
Email: gary@gllplc.com
Respondent

Craig D. Henley
Bar Counsel
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4201 N. 24th St., Ste. 100
Phoenix, AZ 85016-6266
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Lawyer Regulation Records Manager
State Bar of Arizona
4201 N. 24th St., Ste. 100
Phoenix, AZ 85016-6266

by: MSmith

SUPREME COURT OF ARIZONA

In the Matter of a Suspended Member of the State Bar of Arizona	)	Arizona Supreme Court No. SB-14-0048-AP
GARY L. LASSEN, Attorney No. 5259	)	Office of the Presiding Disciplinary Judge No. PDJ20149026
Respondent.	)	**FILED 3/20/2015**

DECISION ORDER

Pursuant to Rule 59, Rules of the Supreme Court, Respondent Gary L. Lassen appealed the hearing panel's findings and imposition of disbarment. The Court has considered the parties' briefs and the record in this matter.

With respect to **Count One**, the Court accepts the panel's determination that Lassen violated ERs 1.1, 3.1, and 8.4(d). We reject the panel's determination that Lassen violated ERs 3.3(a)(1), 4.1(a), and 8.4(c). These ethical rules prohibit a lawyer from making false statements to a court or to others. Neither the State Bar nor the panel has explained how Lassen's conduct in filing appellate briefs that failed to comply with the requirements of the Arizona Rules of Civil Appellate Procedure implicated these ethical rules. Further, the State Bar presented no additional evidence to explain how Lassen's appellate briefs misrepresented the record.

With respect to **Count Two**, the Court accepts the panel's determination that Lassen violated ERs 1.2, 1.4(a), 1.5(a), 1.16,

Exhibit 3

5.5, and 8.4(c).

With respect to **Count Three**, the Court accepts the panel's determination that Lassen violated ERs 1.1, 1.2, 1.3, 1.4, 3.2, and 8.4(d). We reject the panel's determination that Lassen violated ERs 1.7(a)(2) and 3.1. ER 1.7(a)(2) addresses the issue of a concurrent conflict of interest. Neither the State Bar nor the panel pointed to any evidence in the record that would support this ethical violation. ER 3.1 prohibits a lawyer from pursuing a claim with no good faith basis in law and fact. The State Bar failed to present any evidence to support the allegation that Lassen did not have a good faith basis in law and fact for pursuing the underlying discrimination claim.

With respect to **Count Four**, the Court accepts the panel's determination that Lassen violated ERs 1.3, 3.1, 3.3, 3.4, and 8.4(d). We reject the panel's determination that Lassen violated ER 1.2. The State Bar alleged and the panel found that Lassen violated this ethical rule by failing to abide by his client's instructions. Lassen's client did not testify at the discipline hearing and the State Bar presented no other evidence to support this finding.

With respect to **Count Five**, the Court accepts the panel's determination that Lassen violated ERs 1.1, 1.3, 3.2, 8.1, 8.4(d), and Rule 54(d)(2). We reject the panel's determination that Lassen violated ERs 3.1 and 5.5. The violation of ER 3.1 was based on the same conduct alleged in Count Four: filing meritless claims and

unauthorized defaults. Lassen cannot be charged twice for the same conduct. The State Bar alleged that Lassen violated ER 5.5 by engaging in the practice of law during his suspension in 2012. There was no evidence presented to support a finding that Lassen engaged in the unauthorized practice of law with anyone related to this count.

With respect to the sanction, the Court affirms the imposition of disbarment, restitution, and costs and expenses of the discipline proceeding.

IT IS ORDERED affirming the decision and sanction of the hearing panel as set forth in this order.

DATED this 20th day of March, 2015.

The foregoing instrument is a full, true and correct copy of the original on file in this office.

ATTEST _____
Janet Johnson, Clerk of the Supreme Court
State of Arizona
By Karen Gelres Deputy

SCOTT BALES
Chief Justice

TO:
Gary L Lassen
Craig D Henley
Jennifer Albright
Sandra Montoya
Maret Vessella
Don Lewis
Beth Stephenson
Perry Thompson
Mary Pieper
Netz Tuvera
Lexis Nexis

Craig D. Henley, Bar No. 018801
Senior Bar Counsel
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BEFORE THE PRESIDING DISCIPLINARY JUDGE OF THE SUPREME COURT OF ARIZONA

IN THE MATTER OF A DISBARRED MEMBER OF THE STATE BAR OF ARIZONA, **GARY L. LASSEN,** **Bar No. 005259,** Respondent.	**PDJ 2014-9082** **COMPLAINT** State Bar Nos. 14-0401 and 14-0784

Complaint is made against Respondent as follows:

GENERAL ALLEGATIONS

1. At all times relevant, Respondent was a lawyer licensed to practice law in the State of Arizona having been first admitted to practice on April 22, 1978.

2. By Final Judgment and Order dated August 28, 2014, Respondent was disbarred in PDJ-2014-9026 for violating Rule 42, Arizona Rules of Supreme Court, ERs 1.1 [3x], 1.2 [3x], 1.3 [3x], 1.4 [2x], 1.5 [1x], 1.16 [1x], 1.7(a)(2) [1x], 3.1 [4x], 3.2 [2x], 3.3 [2x], 3.4 [1x], 4.1(a) [1x], 5.5 [2x], 8.1 [1x], 8.4(c) [2x], 8.4(d) [4x] and Rule 54(d)(2) [1x].

3. A notice of appeal was timely filed on behalf of Respondent and is currently pending.

4. By Final Judgment and Order dated March 13, 2014, Respondent was suspended in PDJ-2013-9068 for a period of Two (2) Years effective May 7, 2014 for

Exhibit
4

violating Rule 42, Arizona Rules of Supreme Court, ERs 1.3, 1.4, 1.5, 1.16, 3.1, 3.2, 5.5, 8.4(c), 8.4(d) and Rule 54(c), Arizona Rules of Supreme Court.

5. While a notice of appeal was timely filed on behalf of Respondent and is currently pending, the court denied a motion to stay the execution of the sanction.

6. By Agreement for Discipline by Consent, Respondent was suspended in PDJ-2012- for a period of Thirty (30) Days effective April 28, 2012 for violating Rule 42, Arizona Rules of Supreme Court, ERs 1.3, 1.4(a)(2)-(4), 1.4(b), 2.1, 8.1, 8.4(c). Respondent was reinstated on June 25, 2012.

7. By Final Judgment and Order dated December 14, 2009, Respondent was censured (currently, reprimand) and placed on probation for a conviction of extreme DUI, endangerment and leaving the scene of an injury accident in violation of Rule 42, Arizona Rules of Supreme Court, ER 8.4(b), and Rule 53(h)(1), Arizona Rules of Supreme Court.

COUNT ONE (File no. 14-0401/Bejarano)

8. In July 2006, Complainant signed a one-year contract with the School District as the Assistant Superintendent of Teaching and Learning.

9. In or around March 2007, Complainant expressed concern about the director of staff development and was later authorized to write the director with a letter that his contract would not be renewed.

10. In or around April 2007, the Board of Directors for the School District unanimously extended Complainant's contract for another one-year term.

11. Shortly thereafter, an unrelated school employee filed a complaint against Complainant alleging a hostile work environment and an independent investigator hired to investigate the allegations later concluded that:

a. Complainant did not follow due process investigation protocol and common sense standards;

b. Complainant delayed reporting the results of her investigation;

c. Complainant improperly excluded the principal from meeting witnesses;

d. Complainant misstated two witnesses' statements; and

e. Complainant apparently wanted her investigation to reach a certain conclusion.

12. In November 2007, Complainant filed a complaint with the Attorney General's Office alleging that the Board violated the Open Meetings Law when they heard issues related to her investigation in Executive Session on November 1, 2007.

13. In December 2007, Complainant contacted Respondent for representation.

14. In or around January 2008, Complainant was placed on administrative leave and informed that her contract would not be renewed later that spring.

15. In early 2008, Respondent began actively representing Complainant purportedly on a contingency basis.

16. To the best of Complainant's recollection, Respondent did not provide her with any confirmatory writing regarding the representation. To date, Respondent has failed to provide the State Bar with a response to this investigation.

17. On April 10, 2008, the Board unanimously voted not to renew Complainant's contact and later paid the balance of the contract.

18. In May 2008, Complainant began identifying issues that she had certain "support issues" that she wanted resolved quickly including, but not limited to, the School District's payment for vacation and sick time.

19. Complainant's attempts to contact Respondent regarding these issues included three e-mails dated May 15th, 16th and 17th, an e-mail dated September 10, 2008 and a final e-mail dated November 15, 2008.

20. On July 28, 2008, Complainant wrote Respondent an e-mail complaining about delays in the case and Respondent's failure to address the "support issues".

21. In that same e-mail, Complainant also requested a meeting in order to determine whether Respondent was too busy to handle her "contingency" case.

22. That same day, Respondent responded and claimed that he had prepared a pretty detailed complaint but needed to make one more set of revisions before sending it to Complainant for review.

23. On July 31, 2008, Respondent filed the complaint and Arizona attorney Georgia Staton began representing the School District in Maricopa County Superior Court case of *Bejarano v. Roosevelt Elementary School District, et. al.*, CV2008-018174.

24. During her representation, Ms. Staton requested Complainant's availability for a deposition and also submitted interrogatories to Respondent.

25. In October 2008, Complainant submitted her interrogatory responses to Respondent.

26. On November 12, 2008, Complainant e-mailed Respondent complaining that the interrogatory responses contained grammatical errors and were changed without her knowledge or consent.

27. After months of inactivity, Respondent filed a Motion to Set and Certificate of Readiness on May 8, 2009.

28. On June 5, 2009, the parties requested that Scott & Skelly, L.L.C. serve as mediator in the lawsuit and agreed by participation that each of the lawyers and clients will share joint responsibility for their respective pro-rata portion of the mediation fees.

29. On August 24, 2009, opposing counsel filed a Motion for Summary Judgment regarding all of Complainant's claims.

30. On August 25, 2009, the parties participated in the mediation with Scott & Skelly, L.L.C. The first of several monthly bills were mailed to Respondent on August 26, 2009 for One Thousand Thirty Five Dollars ($1035.00), representing Complainant's/Respondent's pro-rata share of total mediation fees.

31. On October 23, 2009, the Court granted the fully briefed Motion for Summary Judgment without oral argument finding that "(Complainant) has simply failed to present facts or law which allow her to sue for relief she seeks."

32. By minute entry dated December 1, 2009, the case was administratively transferred to a new judge and all future hearings were ordered to be heard by the new judge.

33. After filing a Motion for New Trial, Motion for Clarification of Minute Entry and Objection to the Form of Judgment submitted by opposing counsel, the Court issued a minute entry on December 21, 2009 finding in pertinent part:

> "The simple fact is that the Court found Defendant's positions to be legally and factually appropriate on every point. For example...inadequate performance of one's job does not prevent one from being fired regardless of how legitimate one's whistle blowing activity....Moreover, Plaintiff was not fired; instead, her contract was not renewed."

34. The Court then denied all of the pending motions and awarded Forty Two Thousand Eight Hundred Fifty Two Dollars and 05/100 in attorney's fees ($42,852.05), Two Thousand One Hundred Forty Seven Dollars and 95/100 ($2147.95) in non-taxable costs and Three Thousand Four Hundred Seven Dollars and 17/100 ($3407.15) in taxable costs against Complainant. A formal judgment was entered on January 13, 2010.

35. On February 11, 2010, Respondent contemporaneously filed a Notice of Appeal and pleading titled Motion for Relief From Judgment Under Rule 60(c) in which Respondent claims receipt of new evidence supporting one of Complainant's claims.

36. After receiving responsive pleadings from the Defendants, the Court denied the motion after identifying the possible jurisdictional problems created by Respondent's contemporaneous filing of the motion and a Notice of Appeal.

37. On March 3rd and 4th, 2010, after receiving a request for a status of the case, Respondent stated:

a. "We have not had a ruling or any hearing set on our trial court motion. I need to let you know that I thinking the appeal is the likely only way to get Justice. That will unfortunately require additional appeal fees and costs to be incurred. I thus need to impose upon you to send or deliver more funds like you have so graciously done in recent months. Please be aware that I remain confident that in the end that we will win, and that these monies, and much more will be coming our way."

b. "I fully understand your concerns, but I want you to remember that we ran into a scorched earth policy by the insurance company's lawyers and a lazy initially assigned Judge."

38. On June 22, 2010, Respondent received another monthly request for payment from Scott & Skelly, L.L.C.; this one containing a handwritten note requesting a phone call regarding the status of the payment.

39. On August 13, 2010, Scott & Skelly, L.L.C. filed the Arcadia-Biltmore Justice Court case of *Scott & Skelly, LLC v. Lassen and Bejarano*, CC2010-469389 SC naming both Respondent and Complainant and seeking a judgment of One Thousand Thirty Five Dollars ($1035.00).

40. On August 24, 2010, a copy of the Summons and Complaint was personally served upon Respondent.

41. On September 12, 2010, Respondent repeated his statement about the judge in an e-mail stating, among other things, "I have been scouring the prior pleadings and briefs and exhiibits (sic) and intend to emphasize:...4. The trial Judge was lazy."

42. On December 8, 2010, the Court entered a judgment against both Defendants in the Arcadia-Biltmore lawsuit.

43. On April 12, 2011, Division One of the Court of Appeals filed a Memorandum Decision in *Bejarano v. Roosevelt Elementary School District, et. al.*, 1 CA-CV 10-0231 affirming the lower court rulings.

44. All communication between Complainant and Respondent ceased between June 2011 and early 2013.

45. While Respondent was still attorney of record for Complainant, Respondent was suspended in State Bar file 10-1508 for thirty days for violations of 1.3, 1.4(a)(2)-(4), 1.4(b), 2.1, 8.1, 8.4(c), effective April 28, 2012. Respondent was reinstated on June 25, 2012.

46. On or about January 17, 2013, the School District obtained an order for Complainant's appearance at a Judgment Debtor Examination.

47. Complainant was personally served with the order of appearance, but alleges that Respondent failed to inform her of that she was compelled to appear or face possible arrest during her last discussions with Respondent.

48. On March 1, 2013, the Court issued a Civil Arrest Warrant directing any Peace Officer to arrest Complainant for her failure to appear at the Judgment Debtor Examination and further set a cash bond of One Thousand Dollars ($1000.00).

49. When Complainant learned of the arrest warrant from a former employer, she contacted Respondent who claimed that he was unaware of any of the events surrounding the arrest warrant. Complainant then contacted successor counsel, Thomas Ryan, for representation.

50. On March 12, 2013, a Motion to Quash the Civil Arrest Warrant was filed as Thomas Ryan began negotiating a settlement agreement on behalf of Complainant.

51. In early 2013, Complainant refinanced her home and paid the amounts contained in the Superior Court and Justice Court judgments.

52. On March 26, 2013, a Satisfaction of Judgment was filed in favor of Complainant indicating a full payment of the January 13, 2010 judgment in the Superior Court lawsuit.

53. On March 28, 2013, a Satisfaction of Judgment was filed in favor of Complainant indicating a full payment of the December 8, 2010 judgment in the Justice Court lawsuit.

54. Complainant has provided checks and receipts documenting purported "cost payments" of Forty Six Thousand One Forty Nine Dollars ($46,149.00).

Despite repeated demands, Respondent has not provided Complainant with an accounting of these funds.

55. On February 20, 2014, the State Bar mailed Respondent an initial screening letter requesting that a response to the allegations to be provided within twenty days. The initial screening letter also informed Respondent that his failure to fully and honestly respond to, or cooperate with the investigation are grounds for discipline pursuant to Rule 54(d) and Rule 42, Ariz.R.Sup.Ct., ER 8.1(b).

56. On March 19, 2014, the State Bar mailed Respondent a second request for a response to be provided within ten days. The second letter again informed Respondent that his failure to fully and honestly respond to, or cooperate with the investigation are grounds for discipline.

57. To date, Respondent has not responded to the State Bar regarding Complainant's allegations.

58. By engaging in the misconduct described above, Respondent violated the following ethical rules:

a. Rule 42, Ariz. R. Sup. Ct., ER 1.2 – Respondent failed to abide to his client's decisions concerning the representation particularly failing to take action on the "support issues" raised by Complainant at the beginning of the representation.

b. Rule 42, Ariz. R. Sup. Ct., ER 1.3 – Respondent failed to act diligently throughout the lawsuit and his representation of his client.

c. Rule 42, Ariz. R. Sup. Ct., ER 1.4 – Respondent failed to reasonably communicate with his client regarding the status of the case or respond to inquiries by the client.

d. Rule 42, Ariz. R. Sup. Ct., ER 1.5 – Respondent charged, collected and retained unreasonable fees during the representation which were not communicated to the client by writing.

e. Rule 42, Ariz. R. Sup. Ct., ER 1.15 – Respondent charged, collected and retained unreasonable fees during the representation and failed to return unauthorized or unearned fees to the client.

f. Rule 42, Ariz. R. Sup. Ct., ER 1.16 – Respondent failed to properly withdraw from the representation and take the steps to the extent reasonably practicable to protect a client's interests.

g. Rule 42, Ariz. R. Sup. Ct., ER 3.2 – Respondent failed to make reasonable efforts to expedite litigation consistent with the interests of his clients.

h. Rule 42, Ariz. R. Sup. Ct., ER 8.1 – Respondent knowingly failed to respond to a lawful demand for information from the disciplinary authority in connection with the instant investigation.

i. Rule 42, Ariz. R. Sup. Ct., ER 8.2(a) –Respondent made statements with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge.

j. Rule 42, Ariz. R. Sup. Ct., ER 8.4(c) – Respondent knowingly engaged in conduct involving dishonesty, fraud, deceit or misrepresentations.

k. Rule 42, Ariz. R. Sup. Ct., ER 8.4(d) – Respondent engaged in conduct which was prejudicial to the administration of justice.

l. Rule 54(d), Ariz. R. Sup. Ct. – Respondent refused to cooperate, furnish information or respond promptly to any inquiry or request from bar counsel relevant to the pending charges.

m. Rule 72, Ariz. R. Sup. Ct. – Respondent failed to notify the Court and his client regarding his April 2012 suspension.

COUNT TWO (File no. 14-0784/Riccio)

59. In or around October 2012, Complainant and his wife paid Respondent Five Thousand Dollars ($5000.00) in order to represent them regarding certain employment disputes.

60. On February 22, 2013, Complainants paid Respondent another Two Thousand Dollars ($2000.00) bringing the total amount paid to Seven Thousand Dollars ($7000.00).

61. Respondent explained that, during his representation, Respondent would tell the opposing party an hourly billing rate different than the rate actually billed in order to "have some skin in the game."

62. Complainants signed a fee agreement setting forth the hourly rate of One Hundred Twenty Five Dollars per hour ($125.00/hr) along with thirty percent (30%) of the anticipated settlement proceeds.

63. Between October 2012 and February 2013, Complainant and his wife met with Respondent approximately four times.

64. By e-mail dated March 12, 2013, Respondent contacted Complainant regarding a "global" notice of claim purportedly being prepared on Complainant's behalf. Among other things, Respondent promised that a draft would be prepared quickly so that "we can get it served next week".

65. Over the course of the next year, Respondent randomly met and e-mailed Complainant claiming to be in the process of preparing the notice of claim and a letter of intent.

66. On April 11, 2013, Complainant e-mailed Respondent that Complainant received notice that his wife was approved to become his beneficiary – thereby eliminating one of the proposed sections of Complainant's notice of claim.

67. Complainant stated, in part, "[s]o, if you haven't sent out the claim, you can strike that and if you have already, *se* (sic) *la vie*!"[1]

68. Respondent did not respond to the April 11, 2013 e-mail.

[1] Emphasis in original.

69. Complainant attempted to contact Respondent in August and received a recorded message that the office was closed beginning July 22, 2013.

70. Complainant and his wife traveled to Europe between August 2013 and October 2013.

71. Upon their return in October 2013, Complainant attempted to contact Respondent and again received the same recording that the offices were closed beginning July 22, 2013.

72. Between January 2014 and February 2014, Complainant sent Respondent several e-mails alleging that Respondent failed to perform the agreed upon legal services or take any substantive action.

73. On February 18, 2014, Complainant e-mailed Respondent stating, in pertinent part:

a. "Please note it has been ***seven*** weeks since I communicated to you and if you had not sent the letter of intent and filed the claim last year, I wanted you to return my $2000.00 back."[2]

b. "This email below sent to me in March 2013 is is (sic) just one of many where you said you would get the letter out within a week- and did not."

c. "Your delays in sending notice cost me my sick leave of 34 days and much, much more. I am willing to move on, but I am not willing to do do (sic) so without you returning the $2000.00. The email below from you is clearly stating that you were going to send the notice in mid-March, and from the time in December before this when you told me you had some health issues, until now, you have consistently told me one thing and found an excuse to not follow through."

[2] Emphasis in original.

74. On February 19, 2014, Respondent responded by acknowledging the receipt of Seven Thousand Dollars ($7000.00) and reciting certain discussions that purportedly occurred between Respondent and others.

75. The e-mail further states, among other things, that "[i]t is important to note that your total payment to me did not come close toch (sic) the time expended even as of January 28, 2013., (sic)...I do apologize for now (sic) responding earlier, but the situation with my secretary who appears unable to carry on has been a difficult and delicate one. Again, I have no problem with sitting down and going over everything with you. .(sic)".

76. On Febuary 20, 2014, Complainant responded stating, in pertinent part, "Now, I may have used up the money for March, April, May and June...I don't know. I do know that we just spent over six weeks going back and forth trying to sort this out. So, send me a statement for time spent over the six weeks...if that time utilizes the $2000.00 then we are finished and I will not pursue this further...Now again, to be clear, **send us the itemized statement of date and time you worked on my behalf**...".[3]

77. As of the date of this report, Complainant has not received a response to the February 20, 2014 e-mail.

78. Despite repeated requests, Respondent has failed to provide Complainant an accounting for the funds paid during the representation.

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[3] Emphasis in original.

79. On March 27, 2014, the State Bar mailed Respondent an initial screening letter requesting that a response to the allegations to be provided within twenty days. The initial screening letter also informed Respondent that his failure to fully and honestly respond to, or cooperate with the investigation are grounds for discipline pursuant to Rule 54(d) and Rule 42, Ariz.R.Sup.Ct., ER 8.1(b).

80. On April 22, 2014, the State Bar mailed Respondent a second request for a response to be provided within ten days. The second letter again informed Respondent that his failure to fully and honestly respond to, or cooperate with the investigation are grounds for discipline.

81. To date, Respondent has not responded to the State Bar regarding Complainant's allegations.

82. By engaging in the misconduct described above, Respondent violated the following ethical rules:

a. Rule 42, Ariz. R. Sup. Ct., ER 1.2 – Respondent failed to abide to his client's decisions concerning the representation particularly failing to prepare and file the notice of claim or letter of intent.

b. Rule 42, Ariz. R. Sup. Ct., ER 1.3 – Respondent failed to act diligently throughout the lawsuit and his representation of his client.

c. Rule 42, Ariz. R. Sup. Ct., ER 1.4 – Respondent failed to reasonably communicate with his client regarding the status of the case or respond to inquiries by the client.

d. Rule 42, Ariz. R. Sup. Ct., ER 1.5 – Respondent charged, collected and retained unreasonable fees during the representation.

e. Rule 42, Ariz. R. Sup. Ct., ER 1.15 – Respondent failed to account for or return the unearned fees to the client.

f. Rule 42, Ariz. R. Sup. Ct., ER 1.16 – Respondent failed to properly withdraw from the representation and take the steps to the extent reasonably practicable to protect a client's interests.

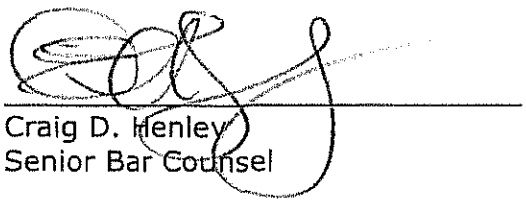
g. Rule 42, Ariz. R. Sup. Ct., ER 8.1 – Respondent knowingly failed to respond to a lawful demand for information from the disciplinary authority in connection with the instant investigation.

h. Rule 42, Ariz. R. Sup. Ct., ER 8.4(c) – Respondent knowingly engaged in conduct involving dishonesty, fraud, deceit or misrepresentations.

i. Rule 54(d), Ariz. R. Sup. Ct. – Respondent refused to cooperate, furnish information or respond promptly to any inquiry or request from bar counsel relevant to the pending charges.

DATED this 22nd day of September, 2014.

STATE BAR OF ARIZONA



Craig D. Henley
Senior Bar Counsel

Original filed with the Disciplinary Clerk of
the Office of the Presiding Disciplinary Judge
of the Supreme Court of Arizona
this 22nd day of September, 2014.

by: Rachael T. Brown
CDH/rtb

BEFORE THE ATTORNEY DISCIPLINE PROBABLE CAUSE COMMITTEE OF THE SUPREME COURT OF ARIZONA

IN THE MATTER OF A SUSPENDED MEMBER OF THE STATE BAR OF ARIZONA,

GARY L. LASSEN,
Bar No. 005259,

Respondent.

No. 14-0401

PROBABLE CAUSE ORDER

The Attorney Discipline Probable Cause Committee of the Supreme Court of Arizona ("Committee") reviewed this matter on June 6, 2014, pursuant to Rules 50 and 55, Ariz. R. Sup. Ct., for consideration of the State Bar's Report of Investigation and Recommendation.

By a vote of 7-0-2[1], the Committee finds probable cause exists that Respondent violated the Rules of the Supreme Court of Arizona:

IT IS THEREFORE ORDERED pursuant to Rules 55(c) and 58(a), Ariz. R. Sup. Ct., authorizing the State Bar Counsel to prepare and file a complaint with the Disciplinary Clerk.

Parties may not file motions for reconsideration of this Order.

DATED this 11th day of June, 2014.

Lawrence F. Winthrop

Judge Lawrence F. Winthrop, Chair
Attorney Discipline Probable Cause
Committee of the Supreme Court of Arizona

[1] Committee members Daisy Flores and Bill Friedl did not participate in this matter.

Original filed this 12th day
of June, 2014 with:

Lawyer Regulation Records Manager
State Bar of Arizona
4201 North 24th Street, Suite 100
Phoenix, Arizona 85016-6266

Copy mailed this 17th day
of June, 2014, to:

Gary L. Lassen
1234 South Power Road,
Suite 254
Mesa, Arizona 85206-3761
Respondent

Copy emailed this 17th day
of June, 2014, to:

Attorney Discipline Probable Cause Committee
of the Supreme Court of Arizona
1501 West Washington Street, Suite 104
Phoenix, Arizona 85007
E-mail: ProbableCauseComm@courts.az.gov

Lawyer Regulation Records Manager
State Bar of Arizona
4201 North 24th Street, Suite 100
Phoenix, Arizona 85016-6266

by: Rodney T. Bruce

BEFORE THE ATTORNEY DISCIPLINE PROBABLE CAUSE COMMITTEE OF THE SUPREME COURT OF ARIZONA

IN THE MATTER OF A SUSPENDED MEMBER OF THE STATE BAR OF ARIZONA,

GARY L. LASSEN,
Bar No. 005259,

Respondent.

No. 14-0784

PROBABLE CAUSE ORDER

The Attorney Discipline Probable Cause Committee of the Supreme Court of Arizona ("Committee") reviewed this matter on June 6, 2014, pursuant to Rules 50 and 55, Ariz. R. Sup. Ct., for consideration of the State Bar's Report of Investigation and Recommendation.

By a vote of 7-0-2[1], the Committee finds probable cause exists that Respondent violated the Rules of the Supreme Court of Arizona:

IT IS THEREFORE ORDERED pursuant to Rules 55(c) and 58(a), Ariz. R. Sup. Ct., authorizing the State Bar Counsel to prepare and file a complaint with the Disciplinary Clerk.

Parties may not file motions for reconsideration of this Order.

DATED this 11th day of June, 2014.

Lawrence F. Winthrop

Judge Lawrence F. Winthrop, Chair
Attorney Discipline Probable Cause
Committee of the Supreme Court of Arizona

[1] Committee members Daisy Flores and Bill Friedl did not participate in this matter.

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by: Rodney T Bray